

We well knowing the great Learning,
Ability and Judgment of the Author, do,
for the publick Good, Allow and Ap-
prove of the Printing and Publishing
of the REPORTS of *WILLIAM*
SALKELD, late Serjeant at Law.

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REPORTS

O F

CASES

Adjudged in the

Court of King's Bench ;

W I T H

Some Special CASES in the Courts of
Chancery, Common Pleas and Exchequer, from the First
Year of K. *WILLIAM* and Q. *MARY*, to the
Tenth. Year of Queen *ANNE*.

By *WILLIAM SALKELD*,
Late Serjeant at LAW.

With Two Tables, the one of the Names of the Cases, the
other of the Principal Matters therein contained.

VOL. II.

Allow'd and approv'd of by the Lord High Chancelloz of
Great Britain, and all the Judges.

*The Second Edition carefully corrected, to which are now
added References to the Reports of the Law.*

In the SAVOY:

Printed by E. and R. NUTT and R. GOSLING, (Assigns of *Edward
Sayer Esq;*) for J. Walthoe in the Middle-Temple-Cloysters, and J.
Walthoe, jun. against the Royal-Exchange in Cornhill. 1722.

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Blankard *versus* Galdy. Trin. 5 W. & M. B. R. Intr. Pas. 3 W. & M. Rot. 35

S. C. 4 Mod. 215, 222, 223, &c. See the Pleadings. Ibid.

IN Debt on a Bond, the Defendant prayed Oyer of the Condition, and pleaded the Statute E. 6. against buying Offices concerning the Administration of Justice; and averred, That this Bond was given for the Purchase of the Office of Justice of the Peace in Jamaica, and that it concerned the Administration of Justice, and that Jamaica is Part of the Revenue and Possessions of the Crown of England: The Plaintiff replied, That Jamaica is an Island beyond the Seas, which was conquered from the Indians and Spaniards in Q. Elizabeth's Time, and the Inhabitants are governed by their own Laws, and not by the Laws of England: The Defendant rejoined, That before the Conquest they were governed by their own Laws; but since that, by the Laws of England: Shower argued for the Plaintiff, That on a Judgment in Jamaica, no Writ of Error lies here, but only an Appeal to the Council; and as they are not represented in our Parliament, so they are not bound by our Statutes, unless specially named. Vide And. 115. Pemberton contra argued, That by the Conquest of a Nation, its Liberties, Rights and Properties are quite lost; that by Consequence their Laws are lost too, for the Law is but the Rule and Guard of the other; those that conquer, cannot by their Victory lose their Laws, and become subject to others. Vide Vaugh. 405. That Error lies here upon a Judgment in Jamaica, which could not be if they were not under the same Law. Et per Holt C. J. & Cor.

2d, In Case of an uninhabited Country newly found out by English Subjects, all Laws in Force in England, are in Force there; so it seemed to be agreed.

3dly, Jamaica being conquered, and not pleaded to be Parcel of the Kingdom of England, but Part of the Possessions and Revenue of the Crown of England, the Laws of England did not take Place there, until declared so by the Conqueror or his Successors. The Isle of Man and Ireland are Part of the Possessions of the Crown of England; yet retain their ancient Laws:

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B

That

(1) Where an uninhabited Country is found out and planted by English Subjects, all Laws in force here are in force there; but in the Case of an inhabited Country conquered, not till declared so by the Conqueror. Vide 3 Keb. 401, &c. 2 And. 116. 4 Leon. 33. 7 Co. Calvin. 23. Vaugh. 279, &c.

That in Davis 36. It is not pretended, That the Custom of Tannistry was determined by the Conquest of Ireland, but by the new Settlement made there after the Conquest: That it was impossible the Laws of this Nation, by mere Conquest, without more, should take Place in a conquered Country: because, for a Time, there must want Officers, without which, our Laws can have no Force: That if our Law did take Place, yet they in Jamaica having Power to make new Laws, our general Laws may be altered by theirs in Particulars: also they held, That in the Case of an Infidel Country, their Laws by Conquest do not intirely cease, but only such as are against the Law of God; and that in such Cases, where the Laws are rejected or silent, the conquered Country shall be governed according to the Rule of natural Equity. Judgment pro quer.

Matthews versus Burdett. Hill. 1 Ann. B. R.

IN the primitive Church, the Laity were present at all Synods: When the Empire became Christian, no Canon was made without the Emperor's Consent: The Emperor's Consent included that of the People, he having in himself the whole legislative Power, which our Kings have not: Therefore, if the King and Clergy make a Canon, it binds the Clergy in re Ecclesiastica, but it does not bind Laymen, they are not represented in Convocation; their Consent is neither asked nor given.

LEASES.

LEASES.

1 Show. 41.

Haths versus All. Trin. 8 Will. III. C. B.

A Lease to commence a date, includes the Day of the Date. *Adjudged by three Judges against Treby, C. J.* But note, a date datis, excludes the Day. Vide 5 Co. 1. 94. b. 2 Co. 55. 2 Bull. 83. 395. 3 Bull. 203. Aleyn. 77. Ray. 84.

Stomfill versus Hicks. Mich. 9 Will. III. C. B.

A Leases to B. for a Year, and from Year to Year as long as it shall please both Parties. *Adjudged that this is a Lease for two Years, and afterwards at Will; and so it was ruled inter Bellasis and Borbrich, Hill. 8 W. 3. C. B.* Vide infra, pl. 4. contra, and pl. 6.

A possessor of a Term for 100 Years, grants the Land, Habendum for 40 Years, to commence after his Death. This is a good new Lease; and if H. possessor of a Term for 20 Years, grant the Tenements for nineteen Years, to commence after his Death, this will be good for so much of the twenty Years as shall be unexpired at the Time of his Death. *Ruled by Holt C. J. at Lent-Session at Dorchester, 10 W. 3. Gree versus Studdley.*

If A. demise Lands to B. for a Year, and so from Year to Year, this is not a Lease for two Years, and afterwards at Will; but it is a Lease for every particular Year, and after the Year is begun, the Defendant cannot determine the Lease before the Year is ended. But in a Lease at Will, the Defendant may determine his Will after Payment of his Rent, at the End of a Quarter, but not the Beginning, lest the Lessor should lose his Rent. The Lessor cannot determine his Will in the Middle of a Quarter, without permitting the Tenant to have the Emblements. *Ruled by Holt C. J. at Summer-Session at Lincoln, 1699.*

Leighton versus Theed. Hill. 13 Will. III. B. R.

If H. holds Land at Will, rendering Rent quarterly, the Lessor may determine his Will when he pleases; but if he determines it within a Quarter, he shall lose the Rent which should have

(1) Lease for a Year, and so from Year to Year, quamdiu, &c.
(2) Term for Years granted for a less Term, to commence after his Death. Good.
(3) Lease for a Year, and so from Year to Year, quamdiu, &c. what it is, and when it may be determined. Vide prox. p.
(4) When Lessor or Lessee at Will may determine his Will. Vide infra.

(5) When Lessor or Lessee at Will may determine his Will. Vide supra.

have been paid for that Quarter in which he determines it. So the Lessee may determine it when he pleases, but then he must pay the Quarter's Rent. Per Holt C. J.

Legg versus Strudwick. Hill. 7 Ann. B. R.

(6)
Patol Demise
to hold from
Year to Year,
& sic ultra
quamdiu, &c.
is a Lease for
two Years,
and after eve-
ry subsequent
Year begun,
not deter-
minable till
that be ended.
See p. 413.
1 Mod. 4.
1 Lutw. 213,
214.

And not void
by the Sta-
tute of
Frauds.

In Replevin the Defendant avowed, for that he being seised in Fee of the Locus in quo, demised the same to A. Habendum de anno in annum & sic ultra quamdiu ambabus partibus placeret, to commence from Lady-Day 1703, rendering an annual Rent, payable quarterly. The Lessee entered, and died the 17th of December, 1706. And Rent for a Year and a half ending at Christmas before was arrears, for which the Lessor entered and distrained. To this the Plaintiff demurred. Et per Curiam it was held first, That after the two Years, the Lessor or Lessee might determine; but if the Lessee held on, he was not then Tenant at Will, but for a Year certain; for his holding on must be taken to be an Agreement to the original Contract, and in Execution of it; and the first Contract was from Year to Year. 2dly, The third Year is not in the Nature of a distinct Interest, because it arises from the same executory Contract, and therefore the Lessor may distrain the third Year for the Rent of the second; and such an executory Contract as this, is not void by the Statute of Frauds, tho' it be for more than three Years, because there is hereby no Term for above two Years ever subsisting at the same Time; and there can be no Fraud to a Purchaser, for the utmost Interest that can be to bind him, can be only one Year. And Holt C. J. cited this Case, coram Hale C. J. A Composition was agreed upon between the Parson and his Parishioners for Tithes quamdiu ambabus partibus placeret. If the Parishioner plows and sows, the Parson shall not that Year recede, and demand Tithes in kind, but must make his Election at the Beginning of the next Year; for the Parishioner would not perhaps have sowed his Land, but that he relied upon his Contract. Cro. El. 775. Keilw. 65. Aleyn 4. 2 Jon. 3. 1 Sid. 359. 14 H. 8. 10.

LE-

LEGACY.

Vide post
464, 508, 547.Ewer *versus* Jones. Mich. 2 Ann. B. R.

IT was held by Holt C. J. clearly, That a Devisee may maintain an Action at Common Law against a Tenant for a Legacy devised out of Land; for where a Statute, as the Statute of Wills, gives a Right, the Party by Consequence shall have an Action at Law to recover it.

(1)
Action lies for a Legacy devised out of Land.
See a Show. 36, 37.
1 Chan. Cases, prox. pag.

57, 257, 258. 1 Chan. Rep. 134, 188, &

Smell *contra* Dee. Mich. 6 Ann. In Canc.

Here bequeathed by his Will, in these Words, viz. I give 100 l. apiece to the two Children of J. S. at the End of ten Years after my Decease: The Children died within the ten Years. Et per Cowper Lord Chancellor, This is a lapsed Legacy, and shall not go to the Executors of the Children; for the Diversity is where the Request is to take Effect at a future Time, and where the Payment is to be made at a future Time. And tho' it was objected by Sir Thomas Powys, That this differ'd from the Case where a Man devised 100 l. to J. S. at his Age of twenty-one, because it is a Contingency whether he attain to that Age; but the Expiration of the ten Years is inevitable; yet the Lord Chancellor answered, That where-ever the Time is annexed to the Legacy it self, and not to the Payment of it, if the Legatee dies before the Time of Payment, it is a lapsed Legacy in that Case. Vide Dy. 59. b. 2 Vent. 342. Off. Ex. 347. Swinb. 311, 313.

(2)
Where a Time is annex'd to the Legacy, and not to the Payment, and Legatee dies before that Time, 'tis lapsed.

If a Legacy be devised generally, and no Time ascertained for the Payment, and the Legatee be an Infant, he shall be paid Interest from the Expiration of the first Year after the Testator's Death; but it seems a Year shall be allowed, for so long the Statute of Distribution allows before the Distribution be compellable, and so long the Executor shall have, that it may appear whether there be any Debts; but if the Legatee be of full Age, he shall only have Interest from the Time of his Demand after the Year; for no Time of Payment being set, it is not payable, but upon Demand, and he shall not have Interest, but from the Time of his Demand; otherwise it is in Case of an Infant, because no Laches is imputed to him. But where a certain Legacy is left payable at a Day certain, it must be paid with In.

See 1 Chan. Cases. 60. 196.
1 Chan. Rep. 183, 188.
2 Chan. Rep. 98.

Interest from that Day. Et nota, The Interest allowed is 5l. per Cent. Per Cowper Lord Chancellor.

Hern contra Merick. Coram Harcourt Lord Chancellor. In Canc.

(3)
Where real
Estate shall be
charged with
Legacies in
Equity.
Vid. notes 14
1 Chan. Rep.
316, 318.
2 Chan. Rep.
200.
1 Chan. Cal.
57, 257, 258.

H Seised in Fee, and indebted by Bonds, by Will gives Lega-
cies to Children (whom he had otherwise provided for before)
and devises his Land to his eldest Son in Tail. The eldest Son
being also Executor, pays the Bonds with the personal Estate, and
now the Legatees brought a Bill to come against the real Estate
in the Right of the Bond Creditors, and be paid out of the
Land. The Court seemed to admit, That if the Land had de-
scended, the Legatees might have been relieved in this Manner;
but since the Testator had devised them, it was resolved, That
they ought to be exempted; for it was as much the Testator's In-
tention that the Devisee should have this Land as the others should
have the Legacies, and a Specifick Legacy is never made into,
in order to make good a pecuniary one. Also this Case is out
of the Statute against fraudulent Devises, because the Debts are
paid, and the Children being otherwise provided for, are not in
the Nature of Creditors. Nota, This Case was upon an Ap-
peal from the Decree of the Master of the Rolls, who held,
That the real and personal Estate should be so charged, that both
the Debts and Legacies should be paid.

3

LI

Libellus Famofus.

Dominus Rex *versus* Bear. Hill. 10 W. III. B. R.

INDICTMENT for Composing, Writing, Making and Col-
lecting several Libels, in quo quorum continetur inter alia
juxta tenorem & ad effectum sequentem, and then sets out the
Alors. Upon Not guilty pleaded, the Jury found the De-
fendant guilty as to the Writing and the Collecting part in in-
dictamento supponit & quod omnia illa preter scripturam & col-
lectionem Not guilty: An Exception was taken in Arrest of
Judgment, That inter alia there was something else,
which perhaps might, if it appeared, qualify the rest.
Et per Cur. Non allocator; for it had been the Case, the
Defendant could not have been found guilty; and regularly,
where a Man speaks Treason, God save the King will not excuse
him. Vide 2 Ro. Rep. 89. And it is not necessary to set forth all
the Libels, but if any Thing qualify that which is set forth, it
must be given in Evidence. It was agreed, ad effectum sequentem of it self had been
naught; for the Court must be Judge of the Words themselves,
and apt of the Construction the Prosecutors puts upon them; but
juxta tenorem sequentem imports the very Words themselves. Vide
Co. Ent. 116. Reg. 169. For the Tenor of the Thing is the Tran-
script. And Rokeby said, the Words ad effectum were loose and
useless Words; and the Words, juxta tenorem, being of a cer-
tain and more strict Signification, the Force of the latter was not
lost by the former; for Libellus per thuribile non violatur; quod
Holt. C. J. concessit; and the Case of Salterhe. H. 33 & 34 Car. 1.
B. R. Rot. 1154. was remembered and agreed, and all were of Op-
inion, That the Words, ad effectum, were rejected by the Words,
juxta tenorem. It was held, That the finding guilty of bare Writing and
Collecting was criminal, notwithstanding Collecting had been better out
of the Case: for, per Holt. C. J. Bare Copying out of a Libel,
by one that is neither Contriver nor Composer, is highly criminal;
and as to this the Chief Justice said, the Essence of a Libel con-
sists not in the infamous Matter; for if a Man speaks such
Words, unless the Words be put in Writing, he is not guilty of
a Libel; but the Nature of a Libel consists in putting this infa-

See 4 Co. 14,
15.
5 Co. 125, &c.
9 Co. 53, 59.
3 Inst. 174.
Mo 813, 627.
1 Sid. 242.
2 Show 468,
471, 488.
S. C. post 646.

The whole
Libel need
not be set
forth in In-
dictment, but
if any Part
qualifies the
rest, it may be
given in Evi-
dence.
See 5 Mod.
163, 164, &c.
1 Sid. 270,
271.
5 Co. 125.
1 Mod. 58.
Hard. 470.
Farrelly 91.

Copying a
Libel is cri-
minal. 5
Mod. 165.

Essence of a
Libel consists
in the Wri-
ting.

mous Matter into Writing; and therefore if Bear writt such Matter, he is a Libeller; for it was not a Libel till it was written; and in all Cases where a Man does that Act, which makes a Thing to be what it is, he is and must be construed to be the Doer of that Thing. This is seen in all Offences, from the highest to the lowest.

If H. contrives any treasonable Matter, and another writes down the Contrivance, the Writer is as guilty as the Inventor. Where an Act of Parliament makes Sodomy felony, and says nothing of the Abettors, if B. should stand by and hold the Door while A. committed Sodomy, B. would be as guilty of felony as A. So in 3 Inst. 59. where an Act of Parliament makes any Thing felony, the nothing be said of the Accessories in the Statute: So in the worst Offences, where there are no Accessories, but all are Principals, as if H. should hold A. while B. beats him, he is guilty of the Battery.

So in the principal Case, he that does that without which the Thing could not be what it is, viz. a Libel, cannot be construed to be innocent.

He that writes a Libel is the Contrivor. 3 Mod. 68.

It is objected, That it is held in 9 Co. 59. Lamb's Case, That a Libeller must be either the Contriver, Procurer, or the Publisher. But this ought to be expounded by Moor 813. where the Writer is held to be in Law, a Contriver; and then that Ground of my Lord Coke's may be admitted to be Law; otherwise it will be doubtful; for if that Case be looked into, the Question there was about the Publication of a Libel; and it was held, That putting the Copy of a Libel was not a Publication, but only Evidence of a Publication; but there was no Question made how far he was guilty of Libelling; and for the Matter of Publication, the bare having a Libel is not a Publication. If a Libel be publicly known, having a written Copy of it, is an Evidence of a Publication; but otherwise where it is not known to be published.

Having a written Copy of a known Libel, is Evidence of a Publication. See 5 Mod. 165. 3 Mod. 68.

Where a Matter is unlawful in general, a general Allegation shall be so taken.

It is objected, That putting a Libel may be a lawful Act, as by the Clerk that reads the Indictment, or by a Student who takes Notes of it; and so the Defendant's might be a lawful Writing.

To this the Chief Justice answered, That the Matter already considered is unlawful, therefore the general Finding shall be taken to be criminal; and that if the Writing was innocent, as in the Case objected, there ought to be a special Finding of these Particulars, which distinguish and excuse it. If an Action be brought on the Statute of Maintenance, it is sufficient to say, quod manet inquit; yet in some Circumstances, a Man may lawfully maintain a Suit, as an Attorney for a new Relation; yet because it is unlawful in Abstracto, that general Allegation is enough, and shall be understood of an unlawful Maintenance; and farther, It cannot be understood of such a Writing; for if an

Officer

Officer or Student does it, 'tis no Libel; becaufe it is not done ad infamiam of the Party, but to bring the Offender to Punishment, and it is only tenor Libelli, and upon fuch Evidence the Defendant could not be found guilty. The Cafe in 3 Inft. 174. is a ftrong Cafe: In that Cafe J. de Northampton is charged with writing only, and there is no mention made of a Publication.

I am not under any neceffity of giving my Opinion, whether writing a Copy of a Libel be writing of a Libel? for if it be not, then the Jury having found the Defendant guilty of writing a Libel, he muft be taken to be guilty of writing the Original, and a Copy could not be given in Evidence. On the other Side, if the Copy of a Libel be a Libel, then the writing of it is a great Offence; But that People may not go away with a Notion, that writing of a Copy, tho' by one that has no warrantable Authority, is not Libelling, the Chief Juftice faid, That fuch a Copy contained all Things neceffary to the Conftitution of a Libel, viz. The fcandalous Matter, and the Writing; and it has the fame pernicious Confequence, fo far as perfonates the Matter of the Thing, and fays fomething or other to be published; therefore he held, That writing a Copy of a Libel was writing a Libel, and if the Law were otherwife, Men might write Copies and print them with Impunity.

Further, the Chief Juftice faid, That the Defendant had great Favour in the Verdict, for when a Libel appears under a Man's own Hand-writing, and no other Author is known, he is taken in the manner, and it turns the Proof upon him; and if he cannot produce the Compofiter, it is held to him that he is the very Man. A Man could have no Temptations to write fuch Libels, but Rancour againft the Government.

Laftly, It was objected, That the Defendant being found guilty of Collecting and Writing, and not of Making and Compofing, the Verdict is repugnant, or an Acquittal; fcd not accufator; for making is the Genus, and Compofing and Contributing is one Species; Writing a fecond Species, and procuring to be written a third Species; fo that not finding him guilty of all, but Writing only, is finding him Not guilty of any Species of Making, but Writing. Juftin, Inft. lib. 4. cap. 4. par. 1. de injuriis, and Bract. lib. 3. Fitz. tit. Coron. 135. Bare Writing was punishable in the Star Chamber, Hob. 162. 219. 12 Co. 35. Heil. 4. Moor 421. Dy. 372. Judgment pro Rege.

LIMITATIONS.

See 1 Saund.

37.

2 Saund. 66,

120, 125.

1 Sid. 305.

Hutt. 109.

Cro. Car. 163,

513, 135.

5 Mod. 426.

2 Mod. 71 &c.

S. C. 3 Mod.

311.

1 Show. 98.

Vid. 1 Lev.

149, 143.

(1)

Defendant's

being beyond

Sea does not

avoid the Sta-

tute of Limi-

tations.

Note, the Law

is now alter'd

by Stat. 4, 5,

Ann. c. 16.

Hall versus Wybourn. Trin. 1 W. & M. Rot. 130. B.R.

IN Bar of the Statute of Limitations, the Plaintiff replied, that the Defendant was beyond Sea, and it was held no Plea, for the Plaintiff might either file his Original, or outlaw him; and in one Dymion's Case, it was held by Bridgman C. J. That the Courts of Justice were shut up so as no Original could be filed, yet this Statute would bar the Action, because the Statute is general, and must work upon all Cases which are not exempted by the Exception.

Budd versus Berkenhead. Trin. 2 W. & M. B.R.

(2)
In Replica-
tion to avoid
the Statute of
Limitations,
the Continu-
ances must be
shown.

See 2 Show.

79.

3 Mod. 111,

112.

DEFENDANT having pleaded the Statute of Limitations, the Plaintiff replied in avoidance, That he sued out an Attachment returnable Mich. 34 Car. 2. Et quod superinde taliter processum fuit, que the Defendant in Michaelmas Term, 2 Jac. 2. appeared, &c. Et per Cur'. This Pleading is not good, it must be shown that there were Continuances till the Time of declaring, and a taliter processum is not sufficient to shew a Wat-ter before Declaration, tho' it has been held so for Warrants after.

Coventry versus Apsey. Mich. 3 & M. Rot. 411. B.R.

(3)
Imprison-
ment, Statute
of Limita-
tions pleaded
to part. Plain-
tiff ought to
reply, it was
one conti-
nued Duress.
Vide post pl.
11.

TRESPASS for imprisoning him, and detaining him in Pris-son from 32 Car. 2. till the 3d of April, 4 Jac. 2. The De-fendant pleaded as to 32 Car. 2. such a Day, non col. in-fra quatuor Annos, and as to the rest, a Pleint and a Capias issu-ed. The Plaintiff demurred: Et per Cur'. Tho' the Imprison-ment be complained of as one continued Imprisonment, yet the Defendant may divide the Time, and plead the Statute as to Part, and the Plaintiff may reply the Continuance; therefore as to this, Judgment was given against the Plaintiff upon his De-murrer, but for him as to the rest; because the Capias was a-warded by the Court ex Officio, and it did not appear that the Defendant meddled in it.

Cary

Cary & Ux' *versus* Stephenson. Pas. 6 W. & M. B. R.
Intr. Hill. 5 W. & M. Rot. 37.

HILLAS indebted to A. who died, B. received the Money, and afterwards the Plaintiff's Wife took out Letters of Administration to A. and within six Years after the Letters of Administration, but not within six Years after the Receipt of the Money, brought an Indebitatus Assumpsit against B. as for Money had and received to the Use of him and his Wife; the Defendant pleaded Non Assumpsit infra sex Annos; the Plaintiff replied the Special Matter; and upon Demurrer, the Court gave its Opinion, That the Statute could be no Bar, because the Plaintiff's Title commenced by taking out Letters of Administration, and this was not a Cause of Action in the Intestate; but they thought it hard to make this so much Money received to the Plaintiff's Use, when at the Time of this Receipt, he was not Administrator. Now, There was a faulty Replication, and the Court abated the plaintiff to bring a new Action, and so the Matter went off.

(4)
A. receiv'd the Intestate's Money, and afterwards Administration was granted to B. The Cause of Action accrues by the Administration.
See 1 Chan. Cases, 152.
2 Chan. Cas. 217. & post pl. 9.

Stokes *versus* Berry. At the Summer-Affizes at Lincoln, 1699. Coram Holt C. J.

IF A. has had Possession of Lands for twenty Years without Interruption, and then B. gets Possession, upon which A. is put to his Ejectment, tho' A. is Plaintiff, yet the Possession of twenty Years, shall be a good Title in him, as if he had still been in Possession. Ruled per Holt C. J. The same Point was ruled by Holt C. J. at Lent-Affizes for Bucks, 12 W. 3. because a Possession for twenty Years, is like a Discent, which tolls Entry, and gives a Right of Possession, which is sufficient to maintain an Ejectment.

(5)
Twenty Years Possession is a good Title in Ejectment for the Plaintiff, as well as Defendant.

Green *versus* Rivett. Pas. 1 Ann. B. R. Intr. Mich. 13 Will. III. Rot. 316.

S. C. Far. 122.
vide ibid. 5.

INDEBITATUS ASSUMPSIT into several Writs; the Defendant pleaded Action non, quia dicit quod billa predicta exhibit. fuit 20 die Junii & non antea, & quod ipse ad aliquod tempus infra sex Annos ante exhibitionem billae predictae. Non Assumpsit, &c. The Plaintiff replied, a Bill of Middlesex, taken die Lunae prox' post tres septimanas, &c. returnable the same Day, whereupon was returned non est inventus, and continued again, by Vic. non misit breve & precept. sicut alias; to this it was answered.

(6)
Plea of the Statute of Limitations to be favoured. Vide 1 Mod. 31. 368.
2 Mod. 71.
311.
1 Vent. 90.
2 Saund. 135.
127.
20, 1 Mod. 89.

ed, and Judgment given for the Defendant; for there cannot be such a Bill of Middlesex as this, which is returnable the very Day of the Terme, and the Statute of Limitations, on which the Security of all Men depends, is to be favoured.

S. C. 1 Salk.
339.

Hunt versus Burn. Hill. 1. Ann. B. R.

Vide the State of this Case, Tit. Fines, pl. 5. Vol. 1. p. 339.

(7.)
He, barred of
his For-
medon, may take
Advantage of
Right of En-
try.

IN, UPON the Question in this Case, Whether it appeared by the Verdict, that the Plaintiff in Tail was barred of his Formedon by 21 Jac. 1? the Court held, That the Verdict was insufficient; and that it should have found that no Formedon was brought, else the Court could not intend but that it was brought; for this is barred of Bar, which should come on the Defendant's Part to them; and this Act is not pen'd as the Statute directs: It is enough in that Case to find a Fine, and you need not find that the Party claimed or entered not, for that comes in by Way of Pleading, but here it is Part of the Body of the Assize. They held, That supposing him barred of his Formedon, yet he is not thereby hindered to pursue his Right of Entry, which accrued to him by the Death of Tenant for Life; for this is a new Right which he had not before: That where a Man releases his Right, he cannot pursue his Action or Remedy, but if a Man has a Right and several Remedies, the Discharge of one is not a Discharge of the other, and that the Statute of 4 H. 7. enures and operates by Way of Bar to the Right, which answers Saul and Clerk's Case, Jones 210, 211. But the 21 H. 8. and the 21 Jac. 1. operate by Way of Bar to the Remedy, and the Word Right there is Right of Entry.

(8.) *Heyling versus Hoskins.* *Vide this Case, Title Action sur le Case sur Assumpsit, pl. 19. Vol. 1. p. 29.*

Gould versus Johnson. Hill. 1. Ann. B. R.

(9.)
Where the
Duty arises
on Considera-
tion execu-
tory, the De-
fendant must
plead, Quod
actio non ac-
crevit, &c.
Vi. ante pl. 4.
2 Show. 79,
126.
1 Mod. 71,
268.

ASSUMPSIT, That in Consideration that the Plaintiff at the Defendant's Request, would receive A. and B. into his House, or Hospices, and dist them, the Defendant promised, &c. Non Assumpsit infra sex Annos was pleaded; the Plaintiff demurred; and held no Plea; for the Defendant cannot in such Case plead Non Assumpsit infra sex Annos, but Actio non accrevit infra sex Annos; for 'tis not material when the Promise was made, if the Cause of Action be within the six Years; and the Dating might be long afterwards; and tho' it appears upon the Face of the Declaration, that the Cause of Action did not arise within six

Years; yet the Defendant shall not take Advantage of that, with-
out Pleading; because there might be an Original writ out, which
the Plaintiff cannot otherwise shew, than by Way of Replication;
upon the Defendant's putting him upon it.

See 1 Mod.
71, 268, 269.
2 Mod. 311.
1 Lev. 48, 111.
2 Saund. 127.

Reading *versus* Royston. Hill. 1. Ann. B. R.

See Farell. 5.
& 12.

ONE seised in Fee, having Issue two Daughters, devised
his Land to his Grandson by his eldest Daughter in Fee;
the eldest Daughter being dead at the Time of the Devise: The
Grandson died without Issue, and the Heir of the Grandson being
the Heir on the Part of the Father, and the Heir of the other Co-
partener entered into the Land, and took the Profits by Moieties
for twenty Years together, thinking according to the Opinion of
Sir Matthew Hale in his younger Years, (who was their Coun-
sel) that the Devise was void for one Moiety. Now the Mistake
being discovered, the Heir of the Grandson brought an Ejectment
against the Heir of the other Copartener; and upon a Special
Verdict found, it was objected in his Behalf, That the Devise
was void as to one Moiety; but this being overruled, (quod
vide title Discent. pl. 3. Vol. 1. p. 242.) it was then objected,
That the bringing of this Ejectment against the Heir of the other
Copartener, for this Moiety, admitted the Plaintiff to be out of
Possession for twenty Years, and then he was barred by the Sta-
tute of Limitations. Sed per Cur.

(10)
Statute of Li-
mitations
runs not
against Heir
unless a Copar-
ty ousted or
disseised.

The Statute of Limitations never runs against a Man, but
where he is actually ousted or disseised; and true it is, one Tenant
in Common may disseise another; but then it must be done by actual
Disseisin, and not by bare Perception of Profits only; but here
the Difficulty is not so great; there is no Tenancy in Common in
this Case, for the Heir of the Grandson had the Whole by Devise;
and the other is a meer Stranger; and where two Men are in
Possession, the Law will adjudge it in him that hath the Right.
A Man may be Tenant in Common by Prescription, yet he may
not be Tenant in Common by Wrong; nor can a Man be dissei-
sed of an undivided Moiety; therefore the bringing the Ejectment
admits nothing; for if a Man be seised of the Whole, and makes
a Lease to another of a Moiety undivided, and a Stranger ousts
the Lessee, he must bring his Ejectment of a Moiety, and so if
they be both ousted, they must bring several Ejectments.

Tenants in
Common
may be by
Prescription,
not by
Wrong.

Cannot join
in Ejectment.

Blackmore *versus* Tidderly. Hill. 3. Ann. B. R.

S. C. 6 Mod.
240.

(11)
Not guilty
within six
Years, is ill
in Trespass.
Vide ante
Pl. 3.

IN Trespass for Assault and Battery, the Defendant pleaded,
Non culp. infra sex Annos, by Mistake, and not according to

the

6 Mod. 5,
12, 99.
Farell, 99.

the Statute, which is but four Years: The Plaintiff demurred, and after Argument it was adjudged an ill Plea; for if it be considered as at Common Law, there was no such Plea; if on the Statute, the Act is not pursued, and the Defendant could not take Issue on it; for quod est culp. infra sex Annos, is an Issue immaterial; because it may be, the Jury might find him Not guilty infra quatuor Annos, but guilty infra sex Annos. Judgment for the Plaintiff.

Hide *versus* Partridge.

(12.)
Statute of Li-
mitations
pleadable to
a Suit in the
Admiralty
for Mariners
Wages.
Suits for Ma-
riners Wages.
Vide Sr. 4 &
5 Ann. c. 16.
1 Salk. 31
to 35.
6 Mod. 11,
12, 25, 79.
Post. 548.

LIBEL was for Mariners Wages in the Admiralty Court, and the Defendant there pleaded the Statute of Limitations, viz. That no Cause of Action accrued within six Years, proximo tempore mentionat. is Libellous, and it was over-ruled there. And now upon a Motion for a Prohibition it was urged, That Mariners Wages were payable in the Admiralty by Indulgence only, and not of Right; that at Common Law, the Statute would be a good Plea: On the other Side 'twas said, the Statute extended only to Counts at Common Law; that it was not pleadable in a Proceeding in the Spiritual Court pro violenta manuum injectione super Clericis: But a Prohibition was denied, because the Statute was ill pleaded; but the Plea was afterwards amended: And Holt C. J. said, It was strange that the same Matter, well pleaded, should be a Defence in one Court and not in another. The Statute of Limitations is a good Plea in Chancery; it is true, 'tis no Plea to a Suit pro violenta manuum, &c. but that is, because the Proceeding is pro reformatione morum, and not for Damages; and so 'tis at Common Law, 'tis no Plea to an Indictment for Treasons, otherwise in an Action. Adjourned.

1 Chan. Cases
152.
2 Chan. Cases
217.

Matthews *versus* Phillips, cite and agree Mich. 6 Ann. B.R.

(13.)
Action re-
mov'd by
Habeas Corpus,
Statute of Li-
mitations
pleaded a-
bove, Plain-
tiff may re-
ply, the Suit
below was
within six
Years.
See 2 Show.
79, 126.

DEBT was brought in the Palace Court, and after some Proceedings there, the six Years expired; the Defendant sued a Habeas Corpus, and removed the Cause into B. R. where the Plaintiff declared de novo, and the Defendant pleaded, That the Cause of Action did not accrue within six Years before the Teste of the Habeas Corpus; and this was held to be a good Plea, but that the Plaintiff might reply the Suit below, and shew that to have been within the six Years; nor that this Suit was a Continuance of the Suit below, but that the Plaintiff had rightfully and legally pursued his Right; and it should not be in the Power of the Defendant to defeat or hinder him of a Remedy,

meny, without any Default; as where one brings an Action before the Expiration of six Years, and dies before Judgment, the six Years being then expired, this shall not prevent his Executor.

See 3 Mod. 426.
1 Mod. 89.
2 Lev. 166.
Lutw. 158.
163.

LONDON, and the Customs thereof.

Arnot *versus* Brown. Mich. 7 Will. III. B. R.

ARNOT and BROWN were Owners of two contiguous Houses. Brown had Lights in his House towards Arnot's Path, and Arnot made up Blinds. The Court of Aldermen, upon 19 Car. 2. c. 3. ordered they should be abated; but a Prohibition was granted in B. R. for whatever they may do in their Inner Court by quod permittat, where they have Power to determine real Actions; 'tis plain that the Court of Aldermen have no Power in this Summary Way, unless by 19 Car. 2. c. 3. and that gave them only a temporary Power during the Rebuilding of the City. While the City was rebuilding they had Power to assign Lights; but by being once assigned, the Party gained a legal Title to them, and may maintain an Action at Common Law for the Obstruction, and the Court of Aldermen have no farther Power. Vide Residuum 6 Mod. 244.

See 3 Lev. 164.
1 Rol. R. 365.
Moor 576.
5 Mod. 75, 93.
160, 440.
6 Mod. 69,
123, 177.
Hard. 56, 2100.
Cart. 68,
114, 8cc.
S. C. 1 Salk. 76.
6 Mod. 244.
V. Post. 498.

(1.)
Court of Aldermen's Power concerning new Lights, by 19 Car. 2. c. 3. was only during the Rebuilding of the City. Stopping Lights, see 1 Lev. 239, 248.
Raym. 87.
1 Mod. 55.
2 Lev. 193.
1 Vent. 274.
6 Mod. 166,
193, 314. Lutw. 382, 386.

Domina Regina *versus* Rogers. Trin. 1 Ann. B. R.

UPON a Certiorari the Custom of London was returned, viz. That if any Citizen speaks contemptuous Words of an Alderman, or assaults him in the Execution of his Office, an Information should be exhibited against him in the Name of the Common Serjeant in the Court of Aldermen, and that they should proceed against him to fine him; and that at a Wardmote held by Sir Robert Jeffreys, the Defendant assaulted him, and said, I have as much to do here as you; you think sure you are among your Bridewel Birds, but you are mistaken; for which an

S. C. Farell. 28.
See 1 Mod. & Prox. Pag. 5 Mod. 75, 94, 440.
2 Lev. 200.
6 Mod. 124.
(2.)
Custom to punish by Information in the Court of Aldermen, for Assault and contemptuous Words of an Alderman in

Execution of his Office is good. Otherwise, if to disfranchise.

Information was exhibited by the Common Council. Et per Cor.
 7 Cro. 75. It has been doubtful if the Offence had been by Words only, be-
 1 Vent. 16. cause no Indictment lay at Common Law, but he is to be bound
 1 Sid. 65. to Good Behaviour; yet for Assault he is punishable, and that
 1 Mod. 35. may be by Information there by the Custom, as well as in
 3 Mod. 139. B. R. by the Course of the Court, tho' the regular Course at
 133. Common Law is by Indictment. 2dly, The Court held, That
 Farc. II. 28. the Information lay in the Court of Aldermen, tho' an Alder-
 6 Mod. 124. man was grieved; otherwise of the Mayor, for he is an integral
 4 Mod. 342. Part, without which the Court cannot be held, but the other
 may be severed, and he must not sit; so the Mayor and Aldermen
 may grant to an Alderman, but the Aldermen and City cannot
 grant to the Mayor: But the Court held, That a Custom to
 disfranchise for contemptuous Words spoken of an Alderman,
 was void, according to 2 Lev. 200.

Custom of LONDON concerning Orphans and Freemens Estates.

Sen. Cro. 347. If a Freeman of London has no Wife, but has Children, the
 1 Lev. 227. half of his personal Estate belongs to his Children, and the
 2 Lev. 130. other half the Freeman may dispose of; so if the Freeman has a
 Rigby, 216. Wife and no Children, half of his personal Estate belongs to his
 1 Kelt. 268. Wife, and the other half he may dispose of: But if a Freeman
 2 Lev. 227. has a Wife and Children, one third Part belongs to the Wife,
 1 Mod. 97. and another third Part to the Children, and the Freeman may
 78. &c. dispose of the other third Part. And if such Freeman dies In-
 2 Show. 174. testate, the Custom allows only two Thirds, and the remaining
 409. 467. Third is subject to the Statute of Distributions, and so providing
 3 Chan. Cases 170. the same with Wills, four Thirds belong to the Wife, and one
 1 Chanc. Case 199, 205, 210. Third belongs to the Children.

Custom ex- If a Freeman of London has two Sons, and the eldest Son dies
 tends only to leaving a Son, and then the Freeman dies, the Grandchild, tho'
 Children, not in Law a Representative of the Son, who never was advanced,
 Grandchild. has no Part by the Custom; for the Custom of London extends
 dices only to the Children, and not to the Grandchildren, per Northey;
 and so it has been certified by the Recorder into Chancery.

Hortchpre- If a Freeman of London has but one Child, and he has re-
 tends only ceived some Portion from his Father, and the Father dies, lea-
 smogst Children. ving this Child and a Wife, the Child shall have his full Orphan's
 Part, without any Regard to what he has already received; for
 that Advancement in part is only to be brought into Hotchpot
 with Children, and not with others. Per Sir Edward Northey.

Where it ap- If a Freeman of London has advanced any of his Children
 pears under with a Portion; yet if it appears what that Portion was by any
 the Father's Writing under the Father's Hand, or by the Father's Will, or his
 Hand, how Marriage-Settlement, and by the said Will or Settlement it is
 much a Child will judge whether full
 has received, the Court Advan-
 will judge ment, or not.
 the Court
 will judge
 whether full
 Advan-
 ment, or not.

Part

Part of the rest of the Father's personal Estate, bringing the Portion already received into Hotchpot; otherwise it is, if it does not appear under the Father's hand what the Advancement was.

Lunatick, Ideot.

Hard's Case. Mich. 8. Will. III. B. R.

SIR Bartholomew Shower moved to quash an Order of Ju-
stices, for removing an Ideot to the Place of the last le-
gal Settlement of his Father, comparing it to the Case of
a Bastard, who is to be maintained by the Parish where
he is born. Sed per Holt C. J. The Father of an Ideot ought
to maintain him, and if he cannot, the Parish or Place where
his Father is settled. There is no Difference between an Ide-
ot and any other poor Child. The Case of a Bastard differs,
for the Reason of that is, because he has no Father, or rather
none that the Law looks upon as such; and therefore till 18 Eliz.
c. 3. the Parishes where they were born, were bound to maintain
them. Adjourned.

Vide 4 Co.
124. Sec.
6 Co. 69.
8 Co. 176.
9 Co. 31.

(1)
Maintainable
by the Parish
where the Fa-
ther is set-
tled, not
where born.
V. post 528,
485. pl. 43.

Thomson versus Leach. Hill. 9 Will. III. B. R.

A Tenant for Life, being Non Compos, with Remainder to
his first Son in Tail, Remainder to B. in Fee, surrendered
by Deed of Surrender to B. before he had a Son; this Deed of
Surrender was held absolutely void, and the contingent Remain-
der not destroyed.

S.C. post 465,
476, 675.

(2)
His Deed is
void.
Vide Lutw.
1188.

MANDAMUS.

Vide 1 Lev.
23, 65, 75, 91,
119, 123, 148,
187, 162.

2 Lev. 14, 18, 238. 3 Lev. 309. 1 Mod. 82. 3 Mod. 265, 332, &c. 4 Mod. 233, 234, 260, 281,
368.

See pag. 430.
pl. 8.

Anonymus. Mich. 8 Will. III. B. R.

(1)
No peremp-
tory Mande-
mus upon an
Action for a
false Return
brought in
C. B.

In an Action on the Case in the Common Pleas, for a false Return of a Mandamus, Judgment was given for the Plaintiff upon Demurrer; and now Serjeant Pemberton came in B. R. and mov'd a peremptory Mandamus, but it was denied; for per Holt C. J. *Quia* Mandamus recte the Fact, prout constat nobis per recordum. How can we say that in this Case, we cannot take Notice of the Records of the Common Pleas? You might have brought your Action here.

Dominus Rex versus The Mayor and Burgesses of Wilton. Mich. 8 Will. III. B. R.

(1)
Want of
Summons is
no Objection
if the Person
appeared and
was heard.

A Mandamus issued to restore Elias Chalk to the Place of a Burgess of Wilton, to which was returned a Custom for the Mayor and Burgesses to denounce for Misbehaviour. Then they set forth several Instances of Misbehaviour, and that he being thereupon fully heard to all that was objected in the Common Council of the Mayor and Burgesses, and it being fully mov'd upon him, they turn'd him out. It was objected, That it was not said he was summoned. Vide Style 31, 446, 452. 3 Bullst. 189. 2 Keb. 489. Per Cur'. The End of the Summons is, that he may be heard for himself, and therefore where he has been heard, want of Summons is no Objection; but this was afterwards determined on other Objections.

Vide 4 Mod.
233, &c.

Dominus Rex versus The Mayor, &c. of Oxon. Mich. 8 Will. III. B. R.

(3)
Where an Of-
ficer at Will
is remov'd,
and the Cor-
poration does
not rely up-
on their
Power, but
return a Mis-
demeanour, and that is insufficient, peremptory Mandamus shall issue.

A Mandamus issued to the Mayor and Commonalty of Oxford to restore Slatford to the Office of Town-Clerk; they returned their Charter of Incorporation, which gives them Power to chuse a discreet Person to be Town-Clerk, to hold at the Will of the Mayor and Aldermen; The 13 Car. 2. Stat. 2. and the Stat. of W. & M. about taking the Oaths, and that the Office of Town-Clerk

Clerk being void, they chose Slatford, and that he took the Oaths of Office, coram nobis Majore & Ballivis; but did not coram nobis Majore & Ballivis take the Oath of Allegiance, per quod his Office became void, & ea ratione, &c. Upon which these three Points were stirred and settled.

1st, Whether the Party that comes in is to take the Oaths at his Peril, or they are to tender them, and if he refused, whether it must not appear upon the Return? Et per Cur. He must take them at his Peril; the Magistrate need not tender to him, but he must tender himself to the Magistrate, and demand them; and if he be refused, must sue a Mandamus, and the Magistrate is punishable, if the Law were otherwise, it would be in the Power of the Magistrate to elude the Act in favour of the Party.

2^{dly}, Whether it be enough to say, he did not take the Oaths before them? And this was held naught; for the Justices have a Power to administer the Oath, and he might take the Oath before them.

3^{dly}, Whether a Person that was only Tenant at Will, should have a peremptory Mandamus? Et per Cur. We do not determine whether there ought to be a good Cause, or not, for such Removal; but suppose it may be without Cause, yet still they must determine their Will: Now they do not return a Determination of his Office by their Will, as the Reason why they do not admit him, but the special Matter of his not taking the Oaths; therefore, since his Office continues, and this Excuse is insufficient, he ought to be restored. A peremptory Mandamus was granted. Vide Serjeant Whitacre's Case.

Vide Raym.

212. of m. d. 3

2 Sanad. 289.

2 Shaw, 68. id

478. m. d. 308

4 Mod. 233. id

217. 219. id

5 Mod. 432.

433. &c.

3 Mod. 72.

118.

Post 432.

The Mayor of Coventry's Case. Hill. 9 Will. III. B. R.

A Motion was made for an Attachment, for not returning an alias Mandamus. Et per Holt C. J. In Case of a Mandamus out of Chancery, no Attachment lies till the Pluries, for that is in the Nature of an Action to recover Damages for the Delay; but upon a Mandamus out of this Court, the first Writ ought to be returned; yet an Attachment is never granted without a peremptory Rule to return the Writ, and then an Attachment goes for the Contempt; and in this Case a peremptory Rule was made.

(4)
The first
Writ ought
to be return-
ed.

Dominus Rex versus The Mayor, &c. of Coventry.
Mich. 10 Will. III. B. R.

(6) **M**ANDAMUS to *John S.* to be one of the Common Council House, the Defendants returned, That they were an ancient Corporation, and that the King by his Letters Patent, creating new Customs, amongst which was this of electing Persons to be of the Common Council House, and removing them at libitum, did grant and confirm all these Liberties, Customs, &c. and that they by force of the said Custom Time out of mind were, &c. secundum formam licentiarum Patentium predictarum sententiarum &c. And first, it was agreed, That the Charter, together by Custom of Charter, has this Condition annexed to it, that the Corporation might replace him at Will, without assigning any Cause; but this differed from the Case of the Receiver of Bath, who was appointed by the Commissioners for regulating Corporations: By that Custom they were to chuse one learned in the Law for a Receiver; The Corporation turned out the Lord B. and returned, he was not learned in the Law; and then quod, for whoever put him in, he must be so qualified by the Charter; and he might bring an Action for a false Return, if he be a Person learned in the Law. And, This Return was held naught, because it did not appear that the Corporation had any such Power; but only by the Statute; whereas they should have returned, they had such a Power positively.

Anonymus. Hill. 10 Will. III. B. R.

(6) **A** Mandamus was granted to admit J. S. Mayor. It was moved, That the Mayor in Possession might have a Rule to see the Charter, that he might be able to make a Return, for the other who had taken the Mandamus, was not rightly elected: But it was denied, for he may return that, and in an Action for a false Return, shall have a Rule to see the Charter and take a Copy; and it was said, That the Court went always upon that Difference.

Buckly versus Palmer. Trin. 11 Will. III. B. R.

See pag. 428. pl. 1.

4 Mod. 34, 233, 236, 368. Raym. 365.

(7)

After the Return falsified, peremptory Mandamus is of Right.

An Action was brought for a false Return, and a Verdict was for the Plaintiff, and a peremptory Mandamus was moved for, and opposed, because it was a hard Verdict, &c. Et per Holt C. J. When an Action is brought for a false Return, and that

See 6 Mod. 152. Information for a false Return, &c.

that is satisfied, we cannot refuse a peremptory Mandamus. See *Sec 1 Salk.*
 nota, This Motion cannot be made till four Days are past after 77, 78.
 the Return of the Posse; because the Defendant has so long to
 make in Arrest of Judgment. *Pal. 12 W. 3. B. R. The Case of*
the City of Exeter.

Dominus Rex versus The Bailiffs and Burgeses of
Malden. Trin. 11 Will. III. B. R.

A Mandamus issued, testifying good cum they ought to chuse
 yearly three Bailiffs, out of such as had not been Bailiffs for
 three Years before, ideo they were commanded to chuse. They re-
 turned their Constitution by Letters Patents to be, to chuse three
 ex Aldermannis, and that they had chosen two, secundum formam
 & effectum literarum Patentium generalium; and this was held
 wrong, for they ought to deny their Constitution to be as is men-
 tioned in the Writ, or then a Compliance with the Writ; where-
 as they have acted according to a Constitution set forth in the Re-
 turn different from the Writ, and do not deny the Supposal of
 the Writ; wherefore a peremptory Mandamus was granted. (8)
 Where the
 Return speaks
 of a Constitu-
 tion different
 from the
 Writ, it ought
 to deny the
 Supposal of
 the Writ.
4 Mod. 34.
122, 136, 233.
Post. Pl. 16.

Dominus Rex versus The Mayor, &c. of Abingdon.
Mich. 11 Will. III. B. R.

A Mandamus was granted to the Mayor, Bailiffs and Bur-
 geses of the Town of Abingdon: The Mayor made a
 Return and brought it into the Court-Dice, intending to
 move to have it filed; and now a Motion was made to stay the
 filing of it; upon Suggestion, That this Return was made by
 the Mayor and minor Part of the Bailiffs and Burgeses, and
 against the Consent of the greater Number, who would have
 obeyed the Writ, and therefore they prayed they might disavow
 this Return and put in another. Et per Holt C. J. Where a
 Writ is directed to a single Officer, as a Sheriff, and a Return
 is made by a Stranger, without his Privity, he may any Time
 that Term wherein the Writ is returned, come in and disavow it,
 but not after the Term. *Dy. 180.* But in this Case, where the
 Writ is directed to several, and the Mayor, who is the most prin-
 cipal and proper Person, returns and brings in the Writ, it is
 not so that we should examine upon Affidavits, whether there was
 the Consent of the Major Part? We will take it, and leave you to
 punish the Mayor for this Misdoement; if he be guilty; for it is
 a great Crime, which will not only merit a heavy Fine, but a
 peremptory Mandamus will be granted, if the Return be falsified.
 If they were all equal Parties, this might be another Case: The
 Re. (9)
 Mandamus
 directed to
 the Mayor,
 Bailiffs, &c.
 Mayor alone
 may make the
 Return, and
 the others
 cannot dis-
 avow; but
 he is punish-
 able, if a-
 gainst the
 Consent of
 the Majority.
Vide Post.
479, 499, 701.

Return was filed, and at the same time Leave was given to file an Information against the Mayor.

Dominus Rex versus The Mayor, &c. of Norwich.
Hill. 11 Will. III. B. R.

(10)

A Mandamus was granted to the Mayor, &c. of Norwich; It was moved, That the Sense of the Mayor differed from the Majority of the Corporation, and that he would execute the Writ, whereas the Corporation were for returning an Excuse, &c. And they prayed, That the Mayor might be ordered to deliver the Writ to the rest of the Corporation, sed non allocatur; for he is the Head and Principal, and take your Course against him.

S. ante 431.
Post. 699.

Dominus Rex versus The Mayor, &c. of Abingdon.
Pas. 12 Will. III. B. R.

(11)

Return, that A. was elected a Burgess, but did not receive the Sacrament within a Year before, per quod the Election was void, and he is not a Burgess, ill.
Ante 428, 429.
4 Mod. 233.
3 Mod. 72, 118.
5 Mod. 432, 433, &c.
2 Show. 68, 475.
2 Sourd. 289.

A Mandamus was directed Majori, Ballivis & omnibus principalibus Burgensibus Burgi de A. (except R. and S.) setting forth the Constitution, and that R. and S. were capital Burgesses, chosen by the Commonality to stand and serve for Mayor for the ensuing Year: and that they were to chuse one of them, Ideo they were commanded to elect one of them accordingly. They returned the Stat. 13 Car. 2. Sess. 2. c. 1. and that within twenty Years, prox. post. 25 March 1663. R. & S. fuerunt electi Burgenses principales, and within a Year before their Election had not received the Sacrament, per quod electio eorum vacua devenit & non sunt principales Burgenses; and this Return was held naught: 1st, The Court considered it without the last Words, Et non, &c. And as to that the Chief Justice said, the Writ supposes them to be Burgesses, and so the Court must intend them, and this is not answered by the Special Matter of the Return, which shews only that he was once elected, and that was a void Election; whereas he might qualify himself and be chosen again; and here is nothing to exclude the Intendment of a subsequent Election, which is according to the Supposal of the Writ.

2dly, The Court considered it with the last Words, and held the Et non sunt principal Burgenses, &c. to be only part of the Conclusion or Inference; and the Chief Justice said, the Law requires the most exact Certainty in these Cases, because the Party cannot traverse nor interplead; and it is not enough to offer a Matter, so that the Party may be able to satisfy it in an Action; but the Matter must be so alledged, that the Court may be able to judge of it and determine, whether it be a sufficient Cause, or not? If the Matter set forth in this Return had been so alledged

Return must be certain to every Intent.
Vide ante 430. Pl. 5. &c.
ib. Post. 436, 586, 589.

in a Plea in Bar, the Plaintiff might have replied a subsequent Election: Ergo, this Return is uncertain; for there might have been a subsequent Election.

Dominus Rex versus The Mayor, &c. of Rippon.

Pal. 12 Will. III. B. R.

MANDAMUS was directed to the Mayor, Aldermen and Commonalty of Rippon, to restore Sir Jonathan Jennings to his Place of Alderman of Rippon; they returned themselves to be incorporated by another Name, viz. Mayor, Burgesses and Commonalty; and farther, That Sir Jonathan Jennings, at such a Time, at an Assembly of the Corporation, came & personaliter libere & debito modo resignavit his Office, declaring, he would continue to serve no longer in that Office, whereupon they chose another in his Room: And this Declaration in a Corporate Assembly was held good, especially since the Corporation accepted it, and chose another in his Place; but till such Election he had Power to make his Resignation, not afterwards; and whether a Deed was necessary, or not necessary, is not material, because they have positively returned quod resignavit, which is false, if a Deed was necessary, and there was none. Also the Court held the Writ naught, because it was directed to the Corporation by a wrong Name, but refused to grant a new Writ of Mandamus, because an Action lay against the particular Persons for the false Return of this; Ergo a new one would be veratious.

(13)
Return of a Resignation in the corporate Assembly and Election of another into the Office, good.

The Case of Andover. Mich. 12 Will. III. B. R.

FIVE Persons cannot have one Writ of Mandamus to be restored; for tho' the End of the Writ is to do Justice, yet the Foundation is the Wrong in turning them out, and the turning out of one is not the turning out of another; nor can several Persons join in an Action on the Case for a false Return. Per Holt C. J.

(13)
Several Persons cannot join in a Mandamus to restore. See 5 Mod. 10, 11. 1 Sid. 209. Post. 43, 67.

Domina Regina versus Twitty and Maddicot.

Mich. 1 Ann. B. R.

MANDAMUS to Sweet A. and B. Church-wardens, suggesting that they were debito modo electi: The Return was, quod A. & B. non electi fuerunt debito modo. It was objected, That it ought not to be debito modo; and it ought to be in the Disjunctive, nec eorum alter elect. fuit. Sed per

(14)
Non fuit debito modo electi, not a good Answer, unless the Writ suggests debito modo.

5 Mod. 10.
11.

Holt C. J. it was resolved, 1st, That one cannot be sworn up on this Writ; for either they were chosen, or the Writ is mis-conceded. 2^{dly}, Where the Writ is to swear one debito modo electus, quod non fuit debito modo electus, is a good Return, for it is an Answer to the Writ; but where it is to swear one electus Church-warden, there quod non fuit debito modo electus, is naught; because it is out of the Writ, and evasive.

Q. 6 Mod. 35.

Anonymous. Mich. 4 Ann. B. R.

(15)
How many
Days be-
tween the
Telle and
Return.

A Rule was made the first Day of this Term, viz. That if the Corporation to which the Mandamus is sent, be above forty Miles from London, then there shall be fifteen Days between the Telle and the Return of the first Writ of Mandamus; but if but forty Miles, or under, but eight Days only: And as to the Alias and Pluries, they made no Rule, but would consider of that, and that the Writ should not be taken before it was granted by the Court; so that the Alias and Pluries may be made returnable immediate, as they used to be: Also the Court said, That at the Return of the Pluries, if no Return was made, and there was an Affidavit of the Service, there should go an Attachment without bearing Counsel to excuse the Contempt.

Domina Regina versus The Bailiffs, &c. of Ipswich.
Serjeant Whitacre's Case. Hill. 4 Ann. B. R.

(16)
Variance be-
tween the
Writ and Re-
turn in the
Name of the
Corporation.
Vide Post.
453, 658.
& ante Pl. 2.

A Mandamus was directed Ballivis, Burgenfibus & Communitat. villæ de Gippo, to restore Serjeant Whitacre to the Office of Recordership; the Return was, responsio Ballivorum Burgenfium & Commun' villæ de Gipwico sive Burgi Gipwici patet. &c. Nos ballivi, &c. return the Constitution so and so; and that the Recorder is amoveable pro malegesturis per Ballivos & Burgenfes vel major' partem eorum quorum Ballivos duos esse volumus: Then they shew Serjeant Whitacre chosen to continue ad libitum, and that at such a Sessions of the Peace, the Serjeant had Notice, but did not attend; and that having Notice to answer, he appeared and answered, and by the Bailiffs, Burgeses and Commonalty (the Bailiffs being then present) he was turned out of his said Office. Et ulterius certificamus quod Inhabitantes villæ prædictæ nunquam nuncupati fuerunt per nomen Ballivorum, Burgenf. & Com. villæ de Gippo, &c. This Case pended long, and was often argued upon several Objections; and, 1st, The Chief Justice held, That Gippos and Gipwicos were different Names, so that the Writ was misdirected; but then they should have returned the special Matter accordingly, and relied upon it; for that

*Domina Regina versus The Mayor and Aldermen of
Norwich. Pas. 5 Ann. B. R.*

(17)
Several Mat-
ters may be
returned, but
they must be
consistent.
Vi. post 586.

MANDAMUS to the Mayor, Aldermen, and capital Bur-
geses of Norwich, they returned the Charter of E. 4. Quod Alder-
manni oneratores & oneratores profit in London, and that in
London, if a Person be elected Alderman by the Ward, the Court
of Aldermen may refuse him; and that D. was elected by the
Ward, but refused by the Mayor, and Aldermen, because he had
not received the Sacrament in an Assize time past. Antece-
dents Electionem suam; and that he was turbulent and factious,
and disturbed his Election by Bishops. Et quod non fuit Electus.
The Court agreed that several Causes might be returned, and
that either, not qualified, or not elected, had been a good Return;
but the Chief Justice questioned whether Bishops should vacate
the Election, because it did not appear to be an Office concerning
the Administration of Justice, and within the Statute E. 6. Altho
the whole Court agreed, that as soon as D. was chose by the
Ward, it was an Election, and that the Aldermen did not chuse,
(having but one Person sent them) but appoint; and that before
Appointment, the Election was complete; and a Presentation is be-
fore the Bishop appoints a Clerk; or as a Presentation is a per-
son Nomination before the other parties. It follows then,
that this Return is repugnant, and the Court cannot tell what
to believe; for at first they admit an Election, and then it is;
yet at last they return, there was no Election at all: A peremp-
tory Mandamus was granted.

Election in
one Body;
Appointment
in another.

*Domina Regina versus The Mayor, &c. of Derby.
Mich. 6 Ann. B. R.*

(18)
Writ to one
to command
another to do
the A. 8. ill.
Vide post
489. pl. 51.
493. pl. 60.

MANDAMUS to the Mayor, Aldermen, and capital Bur-
geses of Derby, viz. Robert A. and B. who removed the
Party complaining from his Office of Burgeses, commanding
them to command A. and B. to restore him, was quashed; for it is
advised that the Writ should be directed to one Person to command
another.

Vide ante
433. pl. 13.

Anonymous.

(19)
Several ought
not to join in
a Writ to be
restored.

A Mandamus went to restore nine Persons to the Place and
Office of Common-Council Men; the Constitution was re-
turned, and that these nine were debite amoti. Holt C. J. The
Writ ought to be quashed; there ought not to be nine Persons
in

In one will; the intention of one is not the intention of another: their intentions are several, and they may have been removed to several different causes: one for one fault, and another for another. How can we grant a joint Reliction to them? Eyre was of the same Opinion.

See 1 Sid.
209.
5 Mod. 10.
11. Ant. 433.
pl. 13.

MARRIAGES.

Alleyne & Ux' versus Grey. Trin. 1 W. & M. B. R.

S. C. 1 Show.
50.

IN Debt on a Bond, the Defendant pleaded *Ne unquies accouple* in loyal Matrimony: Plaintiff demurred, and had Judgment, for it was the Trial; instead of trying per pais, it puts the Trial on a Certificate from the Ordinary; and, 2dly, It admits a Marriage, but denies the Legality of it; whereas a Marriage *de facto* is sufficient, and whether legal or not legal, is no ways material.

(1)
In Debt by
Heron and
Feme;
Nunques ac-
couple is no
Plea.
See 1 Lev. 41.
1 Sid. 13, 64,
387.

Jesson versus Collins. Pasch. 2 Ann. B. R.

S. C. 6 Mod.
155.

MR. King moved for a Prohibition to stay a Suit in the Spiritual Court, upon a Contract of Marriage *per verba de presenti*, suggesting that the Contract was in fact *per verba de futuro*, for which, if not performed, the Party had Remedy at Common Law: Holt C. J. said, That tho' it were *per verba de futuro*, yet it was a matrimonial Matter, and the Spiritual Court had Jurisdiction, and this was the great Objection against Actions at Law, when first brought up in these Cases; but in Answer to this it was held, That the Remedy in the Spiritual Court was waived by betaking himself to Damages for the Breach: Also he said, That a Contract *per verba de presenti*, was a Marriage, viz. I marry you: You and I are Man and Wife; and this is not releaseable: *Per verba de futuro*, I will marry you, I promise to marry you, &c. which do not intimate an actual Marriage, but refer it to a future Act, and this is releaseable, and as it is releaseable, the Party may admit the Breach and demand

(1)
Contract per
verba de prez-
enti, or de
futuro, equal-
ly cognizable
in the spiri-
tual Court,
and their Sen-
tence bind-
ing.
Vide 3 Mod.
165.
5 Mod. 411.
2 Lev. 155, 16.
500g, 11001

Satisfaction: He also said, he remembered this Case upon Evidence: Assumptio, in Consideration that the Plaintiff promised to marry the Defendant, the Defendant promised to marry him; upon Evidence it was proved, that there was a Promise; yet the Defendant producing a Sentence in the Spiritual Court, in Disaffirmance of that Contract, it was held good Counter-Evidence, and the Plaintiff was nonsuit. A Prohibition was denied.

See 1 Lev.
15, 16. acc.

See 6 Mod.
155, 172.

Wigmore's Case. Mich. 5 Ann. B. R.

(3)
Contract per
verba de pre-
senti, is a
Marriage.
3 Lev. 65,
411.
5 Mod. 411.

The Wife sued in the Spiritual Court for Alimony: In fact, the husband was an Anabaptist, and had a Licence from the Bishop to marry, but married this Woman according to the Forms of their own Religion. Et per Holt C. J. By the Canon Law, a Contract per verba de presenti, is a Marriage: As, I take you to be my Wife: So it is of a Contract, per verba de futuro, viz. I will take, &c. If the Contract be executed, and he does take her, 'tis a Marriage, and they cannot punish for Fornication. Upon a Prohibition to the Spiritual Court of Peterborough.

Note, By 3 Lev. Such a Promise, if not in writing, is void by Stat. 29 Car. 2.

Marshal and Marshalsea.

See 6 Mod.
57, 225.

(1)
Bond to the
Marshal to be
a true Pri-
soner, good.

Anonymus. Mich. 9 Will. III. B. R.
PER Holt C. J. It was adjudged in the Case of Sir Jo. Lenthall versus Cooke, That the Marshal might take a Bond to be a true Prisoner; but not to receive or take any Thing of Advantage or Profit to himself, and that if he did, the Bond was void at Common Law.

Ano-

Anonymus. Mich. 10. Will. III. B. R.

A Prohibition was moved to the Marshalsea, because they refused to admit a Plea, that neither of the Parties were de hospicio Regis. Per Holt C. J. This is not the Court mentioned in my Lord Coke's Case of the Marshalsea. If the Cause of Action arise within twelve Miles of London, this Court holds Plea, tho' the Parties are not de hospicio Regis; the Plea is frivolous, and we will not interpose. But Trin. 17 W. 3. B. R. An Action of Debt was brought in the Marshalsea, on a Judgment in B. R. and a Prohibition was granted.

(2) Jurisdiction of the Palace Court.

22

Snow *versus* Firebrass. Mich. 1 Ann. B. R.

A Scire Facias was brought against the Bail, and a Breach assigned in this, That the Defendant had not rendered himself Prisoner Mar' Maresc' Domini Regis: Dr. King objected, That it was not good, without going on and laying, coram ipso Rege existentis, for the King has another Marshal, viz. The Marshal of the Household. Et per Holt C. J. and Powell, The Earl Marshal of England was by his Office Marshal of the King's Bench, as appears by the Book of H. 6. and so continued till the Time of King James the First, when this Office was verbed out of it; so that the Marshal of the King is the Marshal of the King's Bench; no Body else can be understood: the other is Marescallus Hospicii, and never spoken of without that Addition.

(3) Earl Marshal of England was formerly Marshal of the King's Bench.

The Office of Chamberlain of the King's Bench Prison is inseparably incident to the Office of Marshal, and therefore a Grant of the Office of Marshal, with a Reservation of the Office of Chamberlain, is void. Per Holt C. J. Mich. 3 Ann. B. R.

Master

Master and Servant.

See Vang.

299, 299.

299, 299.

3 Lev. 379.

35 2.

S. C. 3 Mod.

311.

2 Show. 39.

3 Lev. 258.

(1)
Goods are
spoiled by the
Default of
the Master of
a Ship, em-
ployed by the
Owners; the
Owners are
liable in re-
spect of the
Freight.
See 3 Lev.
37, 258.
5 Mod. 91,
340.
2 Saund. 260.
Foll. 443.
Action lies
against the
Owners.

For he, that
employs a
Servant, un-
dertakes for
him
Vide Prox.
Casum.
3 Mod. 323.
Moll. 208,
209.
But the Acti-
on must be
brought a-
gainst all the
Part-Owners.

Boson v. Sandford, & al. Mich. 1 Will. & M. B. R.
Intr. Hill. 1 & 2 Jac. 2. Rot. 302.

CASE against A and B. Part-Owners of a Ship, for that
they put Goods on Board, and the Defendants under-
took to carry them safely for Hire, but yet were so neg-
ligent, that the Goods were spoiled: Upon that guilty
plea, in answer it appeared, that C. and D. were also Part-
Owners, and that the Ship was under the Care of a Master, to
whom the Goods were delivered; and this being found specially,
it was argued pro quer. That the Action is grounded on the
Contract, and may be against all, or any of the Defendants:
There was also another Point settled, and that was, whether
the Owners were liable, when in Truth they did not under-
take, but in fact the Master was to be liable? Eyre Justice held,
There was no Difference between a Land-Carrier and a Water-
Carrier, and that the Master of a Ship was no more than a
Servant to the Owners in the Eye of the Law, and that the
Master be less of Dependence, &c. as by the Civil Law. Et
per Holt &c. The Owners are liable in respect of the Freight,
and as employing the Master; for whoever employs another, is
answerable for him, and undertakes for his Care to all that make
Use of him. 2dly, The Court held, That all the Owners were
liable, for they are charged in Point of Contract, as Employers,
and are all equally entitled to the Freight: Either Master or
Owners may bring an Action for the Freight; but if the Owners
bring the Action, they must all join; ergo they must all be joined;
as the Freight belongs to all, so all are equally undertaking;
and a Breach of Trust in one is a Breach of Trust in all; as
where two make one Officer, the Act of one is the Act of the
other. 3dly, The Court held this was not an Action ex delicto,
but ex quasi contractu, and it was not the Contract of one but of
all: That there was no other Tort but a Breach of Trust.
Therefore the Court gave Judgment for the Defendant, because
all the Owners were not joined.

Jones *versus* Hart. Mich. 10 Will. III. Coram Holt C. J.

At Nisi Prius at Guildhall.

A Pawnbroker's Servant took a Pawn, the Pawnbroker came and tendered the Money to the Servant; he said he had lost the Money: Upon this the Pawnbroker brought Treason against the Servant, and it was held well, per Holt C. J.

The Servants of A. With his Cart, run against another Cart, wherein was a Pipe of Salt, and over-turn'd the Cart and spoil'd the Salt; an Action lies against A. So where a Cart or a Barrow run over a Boy, 'twas held the Boy should have his Action against the Master, for the Damage he sustained by this Negligence. So in Lane and Cotton, a Letter with Bills in it was delivered at the Post-Office to a Servant; 'twas held, the Bill lay against the Post-Office and not against the Servant, unless he made span, &c; then he was a Common-carrier, as where a Coach suffers an Injury wilfully; otherwise it is negligent. Per Holt C. J.

Domina Regina *versus* Gouche. Mich. 8 Ann. B. R.

A N Order was made by the Justices of Gouche, reciting, That whereas 22 s. and 4 d. was due from him to S. for Work and Labour in Husbandry, they order him to pay the same; the Exception was, That it does not appear to be Statute-Wages, and such only are within their Jurisdiction. Per Powell and Gould. Tho' the Statute gives them a Power only to set the Rate for Wages, and not to order Payment; yet granting husbandry, they have also taken upon them to order Payment; and the Courts of Law are indulgent in Remedies for Wages, as appears by its suffering the Dominant to have Compensation of his rinder Wages; and therefore they would intend it such Wages as were within the Statute; and Gould J. cited a Case, the King against Domine, an Order to pay for Days Work and Labour done, which was held well; for the Court will intend it within their Jurisdiction upon general Words, unless the contrary appear upon the Face of the Order, as in the Case, 2 Jones 47. for a Coachman's Wages. *Antiqua*, Holt abente.

Paving Vids
Post. 922. A
11 2
Master liable
for the Neg-
lect of his
Servant, not
the wilful
Wrong.
See Prox. Pag.
209. 1. 2. 3. 4.
2 Cro. 102.
Palm. 534.
4 Leon. 123.
2 Saund. 345.
1 Mod. 198.
Hob. 206.
3 Mod. 323.
Hart. 121.
3 Lev. 258.
1 Show. 39.
Post. 613, 614.

(1) Order to pay
for a being
due for Work
and Labour
in Husband-
ry, tho' it
don't appear
such Wages
as the Statute
directs. O. al
Remedies for
Wages are
favoured in
the superior
Courts.

S.C. 6 Mod. 36.
3 Mod. 398,
399.

Ward *versus* Evans. Hill. 2 Anni. B. R.

(4)
Act of a Ser-
vant binds
not his Ma-
ster, unless he
acts by Au-
thority of his
Master, or he
consents.
See 1 Lev. 172.
3 Lev. 373.

WARD sent his Servant to receive a Note of 50 l. of B. who went with him to Sir Stephen Evans's Shop, who indorsed off 50 l. from a Note B. had upon him, and gave Ward's Servant a Note of 50 l. upon one Wallis a Goldsmith, to whom the Note was carried the next Day by Ward's Servant: Wallis refused to pay, and that Day broke; upon this the Note was sent back to Sir Stephen Evans, who refused Payment, whereupon the Action was brought. Et per Cur. It was held, 1st, That this was Money received by Sir Stephen Evans. 2dly, That the Act of a Servant shall not bind the Master, unless he acts by Authority of his Master, and therefore if a Master sends his Servant to receive Money, and the Servant, instead of Money, takes a Bill, and the Master, as soon as told thereof, disagrees, he is not bound by this Payment; but Acquiescence, or any small Matter, will be Proof of the Master's Consent, and that will make the Act of the Servant the Act of his Master.

Goldsmiths
Notes are
Payment
conditionally
only, without
express Con-
sent.
See 6 Mod. 36,
Post. 507, 508.
3 Mod. 36,
3 Lev. 399.
Moll. Li. 2.
c. 10.

3dly, They held this was no Payment; for a Goldsmith's Note is only Paper, and received conditionally, if paid; and not other-
wise, without an express Agreement to be taken as Cash.

4thly, They held, That the Party receiving such Note should have a reasonable Time to receive the Money, as in this Case, the next Day, and is not obliged as soon as he receives it, to go straight for his Money.

Domina Regina *versus* London. Trin. 3 Ann. B. R.

(5)
In Order for
Payment of
Servants Wa-
ges, if it
don't appear
in what Ser-
vice, the
Court will
intend it
Husbandry.
Vide Post.
484. Pl. 40.

ORDER was for Payment of Wages, reciting, That two Persons were retained by London, Overseer of the Works in the Gardens of Hampton-Court, at so much per Diem, and had work there in many Days; therefore the Order was, That London should pay them. Et per Cur. The Statute extends only to Servants in Husbandry, not to Gentlemen's Servants, nor to Journeymen with their Masters: Had the Order been general, viz. to pay so much to two of his Labourers, &c. or two of his Servants, the Court should have supposed them Servants in Husbandry, but here is no Room for such an Intendment since the contrary appears.

Mer-

Jones

Merchants and Merchandize.

Vide 2 Lev.
69, 188, 228.
3 Lev. 37.
258, 351.

Jefferies *versus* Legandra. Hill. 2 W. & M. B. R.
Rot. 659.

S. C. 3 Lev.
320.
4 Mod. 58.
1 Show. 320.
2 Sashd. 205.

ACTION on a Policy of Insurance, the Defendant pleaded Non Assumpsit, and the Jury found the Policy, by which the Insurers undertook against Perils of Sea, Pirates, Enemies, &c. from London to Venice, warranted to depart with Convoy. Et per Cur. The Clause, warranted to depart with Convoy, mean only, That he will leave the Port, and sail with the Convoy, without any wilful Default in the Master; therefore, if by Default of the Master, the Ship is separated and taken, the Insurers are not liable; but if there be no Default, the Master having done all that could be done, and the Ship is separated and taken by Enemies, the Insurers are liable; so if the Ship be lost by Stress of Weather, for they insure against these by their own Agreement.

(1)
In Policies warranted to depart with Convoy, shall be intended without wilful Default of the Master.
Vide ante
440.
6 Mod. 13.
4 Mod. 176.
1 Salk. 31.

Lethulier's Case. Mich. 4 W. & M. B. R.

ACTION on a Policy of Insurance by the Defendant at London, insuring a Ship from thence to the East-Indies, warranted to depart with Convoy; and shews, That the Ship went from London to the Downs, and from thence with Convoy, and was lost. After a frivolous Plea and Demurrer, the Case stood upon the Declaration, to which it was objected, That here was a Departure without Convoy. Et per Cur. The Clause, warranted to depart with Convoy, must be construed according to the Usage among Merchants, i. e. from such Place where Convoys are to be had, as the Downs, &c. Holt C. J. contra, We take Notice of the Laws of Merchants that are general, not of those that are particular Usages. It is no Part of the Law of Merchants to take Convoy in the Downs. Vide Yelv. 136.

(2)
Warranted to depart with Convoy, shall intend from the Place of having Convoy.
3 Lev. 320.
321.
Molloy. li. 2.
c. 7. §. 12.

Martin *versus* Crump. Pasch. 10 Will. III. B. R.

(1)
Survivorship.
Vide 1 Show.
182, 189, &c.

TWO joint Defendants make a Joint Bond, and then leaving an Executor; this Executor and the Surety cannot join, for the Remedy survives, but not the Duty, and therefore on Recovery he must be accountable to the Executor for that.

Green *versus* Young. Hill. 1 Ann. B. R.

(4)
Deviation
discharges
Policy from
that Time
only.

If after a Policy of Insurance, a Damage happens, and afterwards, in the same Voyage a Deviation, yet the Assured shall recover for what happened before the Deviation, for the Policy is discharged from the Time of the Deviation only.

Vide Show. 189. Kemp and Andrews. The Assured recovers between joint Defendants, but not the Interest.

Anonymous. Hill. 1 Ann. B. R.

(5)
Detention.

A Ship insured was in her Voyage seized by the Government, and turned into a Prison. The Question was, whether the Insurers were liable? Holt C. J. thought it was within the Voyage Deviation, but the Cause was referred.

Bates *versus* Grabham, & al. Decemb. 3. 1703.
Coram Holt C. J. At Nisi Prius at Guild-hall.

(6)
Policy altered
by Court
sent after it
was under-
written, well.

IN Case on a Policy of Insurance, upon Non Assumpsit pleaded, the Case was, Mr. Crisp being at the West-Indies, sent a Letter to Bates to insure Goods on the Mary-Galley of St. Christopher's, Captain A. Hill Commander, at London: Bates carried the Letter to Stubbs, who was Policies, and he by Mistake made the Assurance on the Mary, Captain Hallowood Commander, &c. This Policy thus made was subscribed by the Defendant: The Mary-Galley was lost, and then Stubbs applied to the Insurers to consent to alter the Policy, to which they agreed, and the Mistake was mended. It was objected at the Trial, that the Mary was a smaller Ship than the Mary-Galley, and that the Insurers ought to have an Increase of Premium for the Alteration: But it was held by Holt C. J. That the Action well lay, and that the Mistake might be set right, and that Stubbs was a good Witness; and he cited this Case, which happened when Pemberton was Chief Justice. An Insurance was made from Archangel to the Downs, and from the Downs to Leghorn; but there

there was a Parol Agreement at the same Time, that the Policy should not commence till the Ship came to such a Place; and it was held the Parol Agreement should avoid the Writing.

Bond *versus* Gonfales. February 14, 1704. Coram Holt C. J. At Nisi Prius at Guildhall.

CASE upon a Policy, which was to insure the William Galley in a Voyage from Bremen to the Port of London, warranted to depart with Convoy: The Case was, the Galley set sail from Bremen, under Conduy of a Dutch Man of War to the Elb, where they were joined with two other Dutch Men of War, and several Dutch and English Merchant Ships; whence they sailed to the Texel, where they found a Squadron of English Men of War and an Admiral: After a Stay of some Weeks they set out from the Texel, and the Galley was separated in a Storm, and taken by a French Privateer, taken again by a Dutch Privateer, and paid 80 l. Ransom: And it was ruled per Holt C. J. That the Voyage ought to be according to Usage, and that their going to the Elb, tho' in Fall out of the Way, was no Deviation; for till after the Year 1703, there was no Convoy for Ships directly from Bremen to London: And the Plaintiff had a Verdict.

(7) Deviation or not, must be construed according to Usage.

The Mayor and Commonalty of London *versus* Wilks. Trin. 3 Ann. B. R.

A Merchant includes all sorts of Traders as well and as properly as Merchant-Adventurers. Vide Spelm. Guilds Dy. 279. b. A Merchant-Taylor is a common Tradesman. Per Holt C. J.

(8) Merchant, quid?

M O N E Y.

See 1 Salk.
25.
2 Keb. 463.
Litch. 84.
Yelv. 80, &c.
infra.

Dixon *versus* Willoughs. Mich. 8 Will. III. B. R.

Indebitatus
Assumpsit in
13 l. 10 s. for
nine Gui-
neas, well.
Litch. 84.
Yelv. 80, 135.
Poph. 28.
Cro. Car. 515.
Palm. 407.
5 Mod. 6, 7.
Lutw. 497.
488.
1 Salk. 9, 22,
25.

IN Case upon four several Promises, there was a Verdict for the Plaintiff, and inter Damages: It was moved in Arrest of Judgment, that one of the Promises was ill laid, viz. That whereas the Defendant was indebted to him in 13 l. 10 s. for nine Guineas, he promised to pay, &c. and says not, nine Guineas ad valorem, &c. as he ought, the Value being not ascertained by Proclamation. Et per Holt C. J. 1st, Any Piece of Money coined at the Mint, is of Value as it bears a Proportion to other current Money, and that without Proclamation. The Unit was the old Piece, which was 20 s. In King James the first's Time, the Unit was by Proclamation raised 16 d. which was the Reason and Occasion of the Coin of Guineas, and of there being 16 d. Worth of the Unit.

2dly, There are Guineas of 40 s. apiece, and so we will intend these were, and that the Plaintiff was satisfied the rest.

3dly, That it was not necessary to set forth the Number of the Guineas, for in an Indebitatus Assumpsit the Consideration is only set forth to show it was not a Debt by Bond, &c.

MO-

MONOPOLY.

Edgeberry and Stephens.

A Grant of a Monopoly may be to the first Inventor by the 21 Jac. 1. and if the Invention be new in England, a Patent may be granted, tho' the Thing has been used beyond Sea before; for the Statute speaks of new Manufactures within this Realm; so that if they be new here, it is within the Statute; for the Act intended to encourage new Devices useful to the Kingdom, and whether learned by Travel, or by Study, it is the same Thing. Agreed by Holt and Pollexfen, in the Case of Edgeberry and Stephens.

Vide 3 Mod.
131.
1 Mod. 18.
Vaugh. 345,
346.
3 Lev. 351,
352.
2 Jon. 53, 54,
353, &c.

Monstrans de Droit, &c.

Domina Regina *versus* Mason. Trin. 1 Ann. B. R.

It was found by Inquisition, That Ford had forfeited his Office of Warden of the Fleet, upon which it was seized in to the Queen's hands: One Mason brought a Monstrans de Droit in Chancery on the Inquisition, and sets forth a Title, and that by Ford's being seized of the Office, so that by Consequence he could not forfeit it; the Attorney-General demurred: The Cause was brought into B. R. per proprias manus of the Lord Chancellor; and now it appeared that Mason's Title, as set forth, was naught, whereupon Mason, as Amicus Curie, insisted still, That Ford had not forfeited, and so the Queen had no Title; and therefore it was urged, That no Judgment could be given for the Queen, and that the whole Record was here, and the

Vide 3 Mod.
57, 58.
Ryly Plac.
Parl 157, 351.
Scandf.
P. C. 72.
S.C. Farel. 32.

If the Plaintiff fails in his Title, he cannot take Advantage of Want of Title in the Crown, or of a Stranger's Title.

the Record being here, the whole Record was to be affirmed or subverted by the Judgment of this Court. Et per Cur'. The very Record of the Inquisition it self is not before us, but only the Record of the Monstrans de Droit: For as to the Inquisition, the Monstrans de Droit recites it, and concludes prout patet per record. Inquisitionis in filaciis Curie Cancellarie; and the Monstrans de Droit may set forth the Inquisition, with an inter alia, and Oyer may be craved of it. 2dly, The Court held, That tho' the very Record of the Inquisition was not so before the Court, as that they could quash or subvert it, with respect to all Persons or Parties; so as no other Person could at any Time after come into Chancery and shew his Right, for that would be inconvenient; yet it was here with respect to the Party Plaintiff in this Monstrans de Droit, so that if thereby a Title appeared for him, the Court might give Judgment; and if the Inquisition be falsified, it shall be set aside, so far as to make way for the Party's Right; and if the Party's Right can be collected from the Inquisition, it shall be affirmed by the Judgment; so was Holland's Case, and so is Kel. 93. 3dly, They held, That if it appears that he that sued the Monstrans de Droit has no Right, he cannot mend his Case by Exceptions to the Inquisition taken as Amicus Curie, tho' by those Exceptions it appears the Queen has no Right, or that a Stranger has Right; for the Party that sues a Monstrans de Droit, is a Plaintiff, and may be nonsuit, 4 H. 6. 12. And if he fails in his own Title, he is gone as effectually as if he were Nonsuit, and no Judgment needs to be given for the Queen; accordingly Judgment was given here, quod nil capiat per billam suam de Monstratione sua prout.

Vid. Fares. 32.

The Record of the Inquisition is only before the Court, with respect to the Plaintiff.

Vide 1 Salk. 395.

Monstrans de Droit, &c.

Domina Regina versus Mon. Trin. 1 Ann. R. R.

I was found by Inquisition, That Lord had possessed his Office of Master of the Horse, upon which it was shewn in the Queen's Chancery: One Malon brought a Monstrans de Droit in Chancery on the Inquisition, and sheweth a Title to the Lord's being Master of the Horse, to that by the Inquisition he could not hold it; the Attorney-General for the Queen was brought into R. R. per propriam manus inter: & the Cause was brought into Malon's Title, of the Lord's Chancery; and now it appeared that Malon's Title, as set forth, was founded upon Malon, as Amicus Curie, in the Lord's Title, and so the Queen had no Title; and therefore it was urged, That no Judgment could be given for the Queen, and that the whole Record was here, and

MORTGAGES.

Lord Ossulston contra Lord Yarmouth. Decemb. 1707.
In Canc.

THE Earl of Yarmouth made a Mortgage to my Lord Ossulston, with a Proviso, That if the Interest was behind six Months, that then that Interest should be accounted Principal, and carry Interest. Et per Cowper Lord Chancellor, this Clause was decreed to be vain, and of no use, saying, No Precedent had ever carried the Advance of Interest so far, and that an Agreement made at the Time of the Mortgage will not be sufficient to make future Interest Principal; but to make Interest Principal, it is requisite that Interest be first grown due, and then an Agreement concerning it may make it Principal.

Vide 1 Chan. Caf. 2, 22, 59, 102, 166, 283, 2 Chan. Caf. 23, 29, 52, 97, 221, 206.

(1)
Proviso, That future Interest, if not paid, shall be taken as principal, and bear Interest, is void.
1 Chan. Caf. 29, 52, 258.
Vide 1 Chan. Cases 2.
2 Chan. Caf. 35, 39.

Taylor contra Wheeler. Mich. 8 Ann. In Canc.

A Copyholder in Fee surrendered to the Use of the Mortgagee in Fee, and became Bankrupt before Presentment, and there never was any Presentment made; and the Question was, Whether the Assignee of the Commissioners of Bankruptcy, or the Mortgagee should be preferred? Et per Cowper Lord Chancellor, Tho' the Surrender was void in Law for want of a Presentment, and that might be the Laches of the Mortgagee in not procuring it; yet the Surrender was a Lien, and bound the Land in Equity, and the Assignee ought not to be in a better Case than the Bankrupt, who was plainly bound in Equity by this defective Conveyance. Et come moy semble, he became a Trustee for the Purchaser.

(2)
Mortgagee or Purchaser Precedent, tho' by defective Conveyance, shall be preferred before Assignees of Commissioners of Bankruptcy.
See 1 Chan. Cases 119, 150, 166, 167, 201, &c.

Cope contra Cope. In Canc.

If a Man mortgage Lands, and covenants to pay the Money, and dies, the personal Estate of the Mortgagor shall, in favour of the Heir, be applied to exonerate the Mortgage: So it is, tho' there was no Covenant, if the Mortgagor had the Money;

(3)
Where personal Estate shall be applied to pay off Mortgage in Exoneration of Land

1 Chan. Caf.
81, 223, 271,
285, 286.
1 Chan. Rep.
98, 122, 189,
191, 208.
2 Chan. Caf.
98, 165, 187,
221.
2 Chan. Rep.
274, 396.
3 Chan. Rep.
212, 213.

because it was his Debt, and he is bound to make it good tho' the Land be a defective Security; but if Grandfather mortgages and covenants to pay, and the Lands descend to his Son, and his Son dies, having a personal Estate and a Son, the Son's personal Estate shall not go in Aid of this Mortgage: A mortgage his Land to B. and after sells it to C. for 1000 l. which includes the Mortgage-Money; C. the Purchaser shall pay the Mortgage, for he has made it a Debt in himself: But it is to be understood that this Exoneration is not to be allowed, unless there be personal Assets sufficient to pay all Legacies; for the Mortgage shall be paid out of the Land if there be not personal Assets to pay the Legacies; and if by such Payment Assets fall short, the Legatees may make such Mortgagee refund.

1 Chan. Caf.
221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

Vid. Records
165.
Rules, &c.
597, Page 998.
Pl. 3, & 547.
Pl. 14.

Vide Post.
671.

Hinton *versus* Hern. Hill. 9 Will. III. B. R.

Franchise
cannot be al-
lowed on Mo-
tion, unless
it has been
formerly
pleaded, and
is upon Re-
cord.
Vide 1 Sal.
343, &
Post. 500.

In a Motion for a Prohibition to the University of Cambridge, the other Side insisted on their Privileges, which are confirmed by Parliament. Et per Cur. You must plead them. The Difference is, where Franchises have been once allowed on Plea, and are upon Record in Court, there they may be allowed upon Motion ever after; but where they have not been allowed, it is otherwise; and so it was held and done, between Castle and Litchfield, where the Franchise of Oxford was pleaded; and so they were obliged to do here.

Domina Regina *versus* Layton. Pasch. 4 Ann. B. R.

(2)
Where Fine
is set for For-
cible Entry,
Conviction
not quash'd
on Motion.

UPON a Conviction of Forcible Entry, if a Fine be set, the Conviction cannot be quashed upon Motion, but the Defendant must bring his Writ of Error; otherwise if no Fine be set, for then it may be quashed upon Motion: Per Cur.

Names

Names of Purchase and Dignity.

1 Lev. 50. 1 Show. 392. 3 Mod. 303. Ow. 81. Pop. 309. Noy. 82. 4 Co. 118. 1 Salk. 6. 50.

Hob. 129.
1 Vent. 152.
Lit. R. 181,
207.
Yelv. 34.
1 Sid. 40.
6 Co. 53.

AND Indictment was preferred against two Chaitmen for a Battery upon Thomas Lord Harquels of Carmarthen; who was called up to the House of Lords by the Name of Lord Osborn; and it was held by the Chief Justice, that there was no such Person, or at least the Duke of Leeds was the Person, and not the Prosecutor. At the Old Bailey one was indicted for stealing the Goods of the Earl of Kingston, who was the eldest Son of the Harquels of Dorchester. and the Defendant was acquitted by the Opinion of all the Judges, for he was only Mr. Pierpoint. In the House of Lords, Complaint was made against the Harquels of Carmarthen, for Breach of Privilege, and the House said, there was no such Person: The Defendants were acquitted.

(1)
Indictment
for assaulting
a Duke's eldest
Son, styling
him by
his Father's
second Title
according to
common Par-
lance, ill.
Post 539, 512.
Parliament
Cases, 2, 3,
&c.
Faref. 28.

The President and College of Physicians, London, versus Salmon. Trin. 13 Will. III. B. R.

S. C. 5 Mod.
327, 328.
4 Mod. 47.

DEBT was brought in the Name of the President and College of Physicians, on the Stat. 14 H. 8. c. 15. for the Penalty of 5 l. per Month for practising Physick in London without Licence; and upon Demurrer to the Declaration, this Exception among others was taken, That the Action ought to be brought in the Name of the College only, or the President only; the Words of the Patent being, Quod ipsi per nomina Presidentis Collegii, seu communitatis facultatis Medicinæ, London, should sue and be sued. To this it was answered, That they are incorporated by the Name of President and College, and have in Consequence of that a Power to sue and be sued by that Name, and this Power is not taken away by the additional affirmative Power which is farther given to them. 10 Co. 28. b. 30, 123. 1 Ro. Ab. 513. Fitz. Brief. 485. 5 E. 4. 20. 16 H. 7. 1. 29 H. 6. 4. 44 E. 3. 6. b. 11 H. 7. 27. 13 H. 7. 14. And Judgment was given for the Plaintiff.

(2)
Corporation
may sue by
their Name of
Incorporation,
notwithstanding
an express Power
given to
sue by another.
See Lutw.
510, &c. 563.
Cro. El. 357.
Hard. 504.
Hob. 210.

Domina Regina versus *The Inhabitants of Barking, Needham-Market, and Darmesden Hamlets.* Pasch. 5 Ann. B. R.

(1)
On a Certiorari to remove Orders, the Name of the Parish in the Writ; and that in the Order must appear to be the same. Vide ante 434 pl. 16. 1 Salk. 145. 146, 151.

A Certiorari issued to remove all Orders concerning the Inhabitants of the Parish of Barking, Needham-Market, and Darmesden Hamlets; and the Orders mentioned Barking and Needham, and Darmesden Hamlets, without Market. Serjeant Weld argued that they must be taken to be the same. 1 Sid. 64. Writ was to the Justice of Chester; Return was by the Chief Justice; and 1 Ro. 334. A City and a Liberty of a City is the same: Holt C. J. The Chief Justice of Chester, in his Warrant, is called Justiciarius, and there was but one till 18 Eliz. c. 8. which gave the Queen power to make another, who is styled alier Justiciarius, and the first Justiciar, and so our Writs are directed; we therefore take Notice of him, and do not regard his calling him self a Chief Justice. The Reason of 1 Ro. 334. is, That a Writ of a City is no Venue, therefore the Venue is from the City: A Jury may come from a Lieu comes out of a City, not from a Lieu comes within a City. If Needham and Needham-Market be the same Hamlet, so it should have been returned; but we cannot take Notice that there is no such Hamlet as Needham-Market. If Trespass quare Clausum fregit at Needham were brought, and the Plaintiff proved a Breach at Needham-Market, he must be nonsuit.

Novel Assignment.

Vide 1 Mod.
89.

Coke *versus* Evans. Trin. 2 Ann. B. R.

TRESPASS for taking the Cattel in D. The Defendant pleaded, That the Locus in quo was twenty Acres, &c. where he had Common, and justified for Damage-tenant; the Plaintiff replied, that he took them in such a Place, [viz. another] And it was agreed per Holt C. J. and Powell, That the Plaintiff might have a new Assignment, which they told Mr. Southouse, subridendo; who neither confessed nor avoided his Bar, but gave it the Go-by.

(1) Where Defendant by his Plea makes a transitory Trespass local, the Plaintiff may make a new Assignment.

Helwis *versus* Lamb. Hill. 2 Ann. B. R.

TRESPASS for taking and carrying away his Goods in D. The Defendant pleaded that the Locus in quo was his Freehold, and that he took the Goods Damage-tenant, &c. The Plaintiff demurred generally, and had Judgment; for the Action being transitory, there is no Locus in quo supposed: Otherwise in Trespass quare Clausum fregit in D. the Clausum is a Locus in quo; but in the principal Case there is no Place in particular supposed, only D. is alleged for a Venue; therefore if the Defendant will make the Place material, it must come on his Part to shew a Place certain: Also in Trespass quare clausum fregit in D. if the Defendant plead Librum tenementum, and shew he joined thereupon, it is sufficient for the Defendant to shew any Close, that is his Freehold; but if the Plaintiff gives the Close a Name, he must prove a Freehold in the Close named: So adjudged in C. B. and the Judgment affirmed in B. R. upon a Writ of Error.

(2) Where the Place is made material by the Defendant's Plea, he must shew it with Certainty.

NISI PRIUS.

Bullock *versus* Parsons. Pasch. 4 Ann. B. R.

Distringas
with a Blank
for the Cause
of Affize,
amendable.

Authority of
a Judge of Ni-
si Prius is by
Commission
of Affize.
Vid. post 456.

No Distring-
as is a'd-d
by Verdict,
ill Distringas
not.

In Debe; after Verdict for the Plaintiff 99. Eyre moved in
Court of Judgment, that the Distringas was with a Blank,
and Debit (the Cause of Action) omitted; so it was a Distringas
in another Court: On the other Side it was urged to be as
no Distringas, and aided by Verdict; and that it was amendable.
Hob. 146. 2 Cro. 328. The Court made two Questions, 1st, Whe-
ther the Judge of Nisi Prius had Authority to try this Issue? Et per
Holt C. J. The Authority of the Judge of Nisi Prius is not by the
Distringas, but by the Commission of Affize, for it is the 13 E. 1.
c. 30. which gives the Trial by Nisi Prius, and by that Statute, the
Trial by Nisi Prius is given before Justices of Affize; but at first
these Trials by Nisi Prius were always had and made upon the
Venire Facias, and indeed the Clause of the Nisi Prius is by the
13 E. 1. c. 30. expressly ordered to be inserted in the Venire Facias;
and Trials by Nisi Prius continued to be upon the Venire Facias
till 40 E. 3. c. 11. which requires, that the Names of the Justices
be then returned into Court. By this are two Inconveniencies
were removed. 1st, The Party might now be prepared to make
his Challenges, the Panel being first returned into Court, which
was not before; and, 2^{dy}, The Defendant was prevented by
this means to call an Eskin at Nisi Prius, which was used fre-
quently before; for by Marb. c. 13. the Defendant was allowed
one Eskin, and that after Issue joined upon the Return of the
Venire: By Consequence, when that was returned at Nisi Prius,
he could eskin at Nisi Prius; but now it is returned above, he
must eskin above, and cannot now eskin at the Trial, because
the Trial is upon the Distringas and not upon the Venire.
2^{dy}, The Court held no Distringas, or the Want of a Distring-
as to be aided by Verdict, but an ill Distringas was not; and re-
membered a Case, wherein Saunders, of Counsel at the Bar, drop-
ped the Distringas out of his Hand, that he might want a Di-
stringas, which would be aided, and not keep and shew an ill one,
which would be naught. Also they held it amendable, and gave
Judgment pro Quer.

NON.

NONSUIT, &c.

1 Sal. 21.
6 Mod. 93,
261.
Hard. 126,
153.
Raym. 38, 73.
Farell. 32,
48, 86.

Allington *versus* Vavasor. Trin. 12 Will. III. B. R.

ALticeat was sued out against four Defendants in Trespass; the Plaintiff was nonsuit for want of a Declaration, and the Defendant's Attorney entered four Non-suits against him; and it was held to be irregular, because the Trespass is joint, and tho' the Plaintiff may count severally against the Defendants, yet it remains joint till it is severed by the Court.

(1)
In Trespass against four, there can be but one Non-suit for want of declaring.

Lover *versus* Salkeld. Trin. 12 Will. III. B. R.

TRESPASS against two Defendants, and Verdict for the Plaintiff; one Defendant being an Infant, the Plaintiff took Judgment against the other, and entered a Non. Prof. after the Judgment against the Infant: Upon this Judgment the Plaintiff sued out Execution, upon which Error was brought: And Mr. Northey objected, That the Execution and Judgment could not vary from the Demand of the Writ: Raymond contra. Costs are several, and the Plaintiff may as well enter a Non Prof. quoad one Defendant upon a Verdict by Verdict, as if one Defendant had demurred, and Verdict against the other; and that a Non Prof. may be entered after Judgment as well as before; and for Non Prof. entered after Judgment, he cited 15 E. 4. 26. 14 E. 4. 6. Hob. 71. 1 Ro. Rep. 379. 2 Ro. Abr. 106. pl. 5. Holt C. J. said, he supposed those were interlocutory Judgments wherein it might well be, but a final Judgment differed; for that being once wrong, a subsequent Entry would not set it right. Adjournatur.

(2)
Non Prof. may be entered as to one Defendant after interlocutory Judgment, not after final.

Cooke *versus* Foster. Trin. 1 Ann. B. R.

S. C. Farell. 32.

If a Man appear at the Day of the Return of the Process and put in Bail, tho' he never was arrested nor the Process returned, yet if the Plaintiff does not declare against him in two Terms, a Non Prof. may be entered against him.

(3)
Where the Defendant files Bail without Arrest, Plaintiff may be Non Pros'd.

Goddard

S.C. 1 Salk. 21.
6 Mod. 261.

Goddard *versus* Smith. Mich. 3 Ann. B. R.

(4)
Vide 11 Co.
65, 66.
6 Mod. 95,
262.

1 Sid. 420.
1 Vent. 32. 5 Mod. 208. Hard. 126, 153.

(5)
Entries of
Non Prof.

A Discharge by Nolle prosequi upon an Indictment, is not sufficient to maintain an Action for a malicious Prosecution. Vide this Case, Title Action sur le Case, pl. 11. p. 21.

Vide Co. Ent. 650. d. In Trespass, several Issues, one found for the Plaintiff, & super hoc idem quer. gratis hic in Cur. cognovit se ulterius nolle prosequi versus le Defend. de ceteris exitibus, upon which there is an eat inde sine die, and the Plaintiff has Judgment for the other: Es vide ibi 676, &c. Issue for part, and Demurrer for part, in an Action of Trespass, and Verdict pro Quer' upon the Issue; upon which the Plaintiff enters a Non Prof. in this Manner: Es super hoc idem quer' quoad materiam predictam unde partes predictae posuerunt se in iudicium fatetur se nolle materiam illam, &c. ulterius quovismodo intronittere: Ideo idem defendens eat inde sine die, &c. & superinde idem querens petit iudicium de damnis predictis, &c. Ideo consideratum est, That the Plaintiff recover; and that the Plaintiff be amerced pro falso clamore as to the rest, & quod defendens eat inde sine die. Vide ibi 28. Jury came in with their Verdict, and the Plaintiff was nonsuit, and the Entry is, super quo querens solemniter exactus non revenit, nec est prosecutus billam suam, super quo consideratum est quod nil capiat.

Greeves *versus* Rolls Pasch. 4 Ann. B. R.

(6)
Judge of Nisi
Prius may re-
ceive a Non
Prof. at the
Assizes.
Vid ante 454.
Raym. 38, 73.

In Ejectment
against seve-
ral, if some
confess Lease,
&c. and o-
thers do not,
the Plaintiff
may go on as
to the for-
mer, and be
nonsuit as to
the latter.

The Judge of Nisi Prius may receive a Non Prof. at the Assizes; so it was held by two Judges, and that Judgment was affirmed in the House of Lords against the Opinion of Holt C. J. For before the Statute of York, the Justices of Nisi Prius had no Power to record a Nonsuit or Default in the County, and consequently have no Power now to enter a Non Prof. which is not within that Statute. At Common Law they could not record a Non Prof. Default or Nonsuit. Now, The principal Case was, Ejectment against several, who all entered into the Rule of Lease, Entry and Duster; at the Assizes some would confess, and others would not: The Plaintiff, as to those who would not confess, entered a Non Prof. and went on against the others, and recovered; upon this a Rule was made, That in like Cases the Plaintiff should go on against those who would confess, and as to those who would not, should be nonsuit; but that the Cause of the Nonsuit should be expressed in the Record, viz. because those Defendants would not confess Lease, Entry and Duster; and upon the Return of the Posse, the Court would be informed what Lands

Lands were in the Possession of those Defendants, that the Judgment might be entered against the casual Ejector as to them.

It was agreed in the arguing of this Cause, That where there are several Defendants, and they sever in Plea, whereupon Issue is joined, that the Plaintiff may enter a Non Prof. as to one Defendant at any Time before the Record is sent down to be tried at Nisi Prius.

Where several Defendants sever in Plea, Plaintiff may enter Non Prof. as to any one before Record sent down.

NOTICE, &c.

Lazier *versus* Dyer. Mich. 2 Ann. B. R.

ISSUE being joined and entered, as of Trinity-Term, the Plaintiff rested till the Trinity-Term following, and then gave Notice of Trial after the Term; and a Venire Facias and Distringas was taken out in the Vacation, but rested and entered as of the Term. Et per Cur'. This is not sufficient Notice; for tho' in Law, this was a Proceeding within the Term; yet in Fact it was a Proceeding in Vacation, and therefore there was not a Term's Notice of Trial.

Vide 5 Mod. 96, 129, 257, 330, 442, &c. 2 Show. 316. 1 Lev. 21, 106, 152. Lurw 404, 409, &c. S. C. Post 650.

Smith *versus* Goff. Pasch. 4 Ann. B. R.

PLAINTIFF declares, That whereas H. owed him 30 l. by Bond, the Defendant promised, that if the Plaintiff delivered up the said Bond, he would pay him the said 30 l. and says, he delivered up the said Bond to H. unde the Defendant had Notice, and had not paid it. On Non Assumpsit pleaded, Verdict was for the Plaintiff: Upon Motion in Arrest it was held, That Delivery must be intended to the Obligor, for that is properly a Delivering up; and delivering up must be construed the most effectual Delivering; which is such as that the Bond may be cancelled. And, There needs no Notice, because the Defendant knew whom to resort to; and the Difference is, where a Person is named, and where not.

(2) Notice not necessary to be alledg'd, where the Thing can be intended to be known without it. See 4 Mod. 181, 200, 259, 288. 4 Mod. 230, 239. 5 Mod. 330. Fares 143, &c.

NUSANCES.

Vide 9 Co.
57, &c.
5 Mod. 242.
Raym. 74.
6 Mod. 145.
Vaugh. 333.
340, 350.
1 Mod. 55.
76, 168, 202.

Rex & Regina *versus* Wilcox. Hill. 1 W. & M. B. R.

(1)
Fine pardon-
ed by general
Pardon, but
Abatement
not excused.
Vide Vaugh.
333.

THE Owner of the Glass-house at Lambeth was indicted for maintaining that House, being a Nuisance, and was convicted and fined; and now it was moved, That by the Act of general Pardon the Defendant was excused and discharged, both as to the Fine and the Abatement of the Nuisance: But the Court upon Consideration held, That he should be discharged only as to the Fine and not as to the Abatement, for that is not a Punishment of the Party, but a Removal of that which is a Grievance to other People, and any Person may abate a common Nuisance.

See Mo. 253.
Lutw. 1586.
&c.

Palmer *contra* Poultney. Mich. 8 Will. III. C. B.

(2)
Quod per-
mittat lies de
Edificio
9 Co. 53, 54.

QUOD permittat prosternere quadam ædificia ad nocumens, &c. And the Court held, That a quod permittat will lie de ædificio; but vide Noy 68. 3 Cro. 520, 402. It lies not de mole, F. N. B. 110. it lies de fabrica, F. N. B. 184. which the Court held as uncertain as ædificium. Also there may be a Building without a Name; and the Court held, That whether the Nuisance was by the Tenant or a Stranger, the Plaintiff may maintain a Quod permittat, for 'tis the same Prejudice to the Plaintiff. F. N. B. 184. Et Nota, In a Quod permittat the Jury have a View; but that did not weigh with the Court, for they said that could be no Direction to the Sheriff, tho' it might to the Jury.

Lodie *versus* Arnold. Mich. 9 Will. III. B. R.

(3)
In Justifica-
tion by A.
batement of a
Nuisance, it
need not be
shown that he
did it, doing
as little hurt
as could be.

TRESPASS for breaking his Close, and throwing Bricks and other Materials there lying ergo confectioem domus de novo erecta into the Sea; the Defendant pleaded it was a Nuisance, being a House built across the Way, and that he pulled down the Walls, &c. and they rolled into the Sea: The Plaintiff demurred, and Judgment was given for the Defendant: And,

1st, The Court seemed to agree, That the Trespass, which is justified, is not the Trespass complained of, for that was throwing Materials there lying; this, which is confessed, is pulling down a Wall. 2dly, That when H. has a Right to abate a publick Nuisance, he is not bound to do it orderly, and with as little hurt in abating it, as can be; and therefore was not answerable in this Case for the Rolling into the Sea. In the Case of James against Hayward, the Defendant might have opened the Gate without cutting it down; yet the Cutting was lawful; and the Court denied Hill's Case, 3 Cro. 384. that Matter of Aggravation need to be answered. But, 3dly, The Court held, That the Declaration was repugnant and insensible; there could not be Materials towards the Building of a House Erect, which is already built.

Rosewell *versus* Prior. Mich. 10 Will. III. B. R.

IN an Action upon the Case for erecting a Shed upon the Defendant's Ground, so near the Plaintiff's House that it stopp'd up his Lights; the Plaintiff declared, that he was possessed of a House which had Windows, per quas lumen inferebatur & inferri consuevit: After Verdict for the Plaintiff, it was moved in Arrest of Judgment, that the House was not said to be an ancient Messuage, and the Defendant appeared not to be a Wrong-doer; for one may erect a Shed on his own Ground against another's Windows, if they are not ancient Lights. 3 Cro. 118. And all the Precedents of stopping Lights have it, either antiquum Messuagium or antiqua lumina. 1 Cro. 325. Pop. 170. 2 Cro. 372. Yelv. 215. Sed per Cur'. The Word consuevit imports Usage Time out of Mind, and we must intend, after Verdict, That Usage Time out of Mind was proved; and so indeed it was in this Case, for otherwise the Jury could not have found for the Plaintiff. The Court seemed to think this Declaration would not have been good upon Demurrer.

Dominus Rex *versus* Rosewell. Hill. 10 Will. III. B. R.

IF H. builds a house so near mine, that it stops my Lights, or shoots the Water upon my House, or is any other Way a Nuisance to me, I may enter upon the Owner's Soil and pull it down; and for this Reason only a small Fine was set upon the Defendant in an Indictment for a Riot in pulling down some Part of a house, it being a Nuisance to his Lights, and the Right found for him in an Action for stopping his Lights.

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D

Rose-

S. C. 6 Mod.

116.

Vide prox.

pag.

(4)

In Case for stopping Lights, it must appear that the Lights were ancient.

See 6 Mod.

116, 374.

1 Mod. 55.

2 Lev. 194.

1 Lev. 122.

&c. & infra.

9 Co. 58.

Cro. El. 402.

Consuevit after Verdict in

such Action,

imports U-

lage Time

our of Mind.

(5)

H. erects a

House which

stops my

Lights, I may

pull it down.

See 6 Mod.

314, &c. su-

pra.

1 Vent. 237,

239, 274.

2 Lev. 194.

Raym. 87.

1 Sid. 167.

S. C. ante
459. and
6 Mod. 116.

(6)

A. Tenant for
Years erects a
Nuisance, and
makes an Un-
der-Lease to
B. Plaintiff
may have an
Action a-
gainst either.
See 6 Mod.
116, 314. ante
459, &c. ib.

Rosewell versus Prior. Hill. 13 Will. III. B. R.

IN an Action upon the Case, for that the Plaintiff being seised of an ancient House and Lights, the Defendant had erected, &c. whereby they were stopp'd. There was a former Recovery for this Erection, and this Action was for the Continuance; and the Case was, Tenant for Years erected a Nuisance, and afterwards made an Under-Lease to J. S. The Question was, Whether after a Recovery against the first Tenant for Years for the Erection, an Action would lie against him for the Continuance after he had made an Under-Lease? Et per Cur. It lies; for he transferred it with the original Wrong, and his Demise affirms the Continuance of it: He hath also Rent as a Consideration for the Continuance, and therefore ought to answer the Damage it occasions. Vide Jones 272. Receipt of Rent is Upholding. 2 Cro. 372, 555. The Action lies against either at the Plaintiff's Election.

Domina Regina versus Wigg. Pasch. 4 Ann. B. R.

(7)

Keeping
Swine in a
City, a Nu-
sance at Com-
mon Law.
See 2 Rol.
Abr. 149, 141.
Cro. Car. 370.
9 Co. 57, 58.
2 Show. 27.
30, 81, 327.

Where the
Statute makes
the Offence,
no other Re-
medy can be
pursued but
what the Sta-
tute gives;
otherwise of
a Crime in-
distinguishable be-
fore.

INDICTMENT for keeping Hogs in some of the back Streets of London, contra formam Statuti. 92. Whitacre moved to quash it, because the Swine are forfeited by the Stat. 2 W. & M. Sed. 2. cap. 8. sect. 20. Ergo no Indictment lies, at least not contra formam Statuti; he compared it to the Case of the Queen against Watton, which was an Indictment for keeping an Alehouse, and held not to lie, because there is another Remedy. Curia; Where a new Penalty is applied for a Matter, which at Common Law was an indictable Offence, as in this Case for keeping Swine in the City, which is a Nuisance, either Remedy may be pursued; but where the Statute makes the Offence, that Remedy must be taken which the Statute gives: And as to its being contra formam Statuti, that is Surplusage; but if that was a Fault, they said, they would not quash it, being for a Nuisance, but he would demur; accordingly it was demurred to, and came on in the Paper, and Judgment given for the King. Afterwards 92. Whitacre moved to set aside the Judgment, alledging Surpris and Want of Notice. Sed non prevaluit; But no Counsel appeared for the Defendant when Judgment was given.

Oaths and Affidavits.

Salloway *versus* Whorewood. Mich. 8 Will. III. B. R.

UPON a Rule to shew Cause, the Plaintiff offered several new Affidavits, and this Diversity was taken, viz. Where they contain new Matter, and where they tend only to confirm what was alledged and sworn when the Rule was made; in the later Case they may be read, not in the former.

Dominus Rex *versus* Jones. Hill. 8 Will. III. B. R.

IF Affidavits taken before Commissioners in the Country, according to 29 Car. 2. c. 5. be expressed to be in a Cause depending between A. and B. and there is no such Cause in Court, they cannot be read, because the Commissioners have no Authority to take them, and there can be no Perjury; otherwise if there be a Cause in Court, and this concerns some collateral Matter.

Davis and Carter's Case.

Davis and Carter stood in the Pillory, and the Court would not allow their Affidavits to be read; Hill. 7 W. 3. B. R. But Mich. 4 Ann. B. R. a Motion was made to set aside a Judgment for Irregularity on the Defendant's Affidavit; and Mr. Whitacre objected to the reading it, because he was convict of Perjury. Et per Holt C. I must be therefore suffer all Injuries and have no Way to help himself? Powell J. You ought to have the Record of Conviction in your hand when you make this Objection. But per Holt C. J. If he had, it would be nothing to the Purpose.

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See 2 Mod.
173.
3 Mod. 108.
2 Show. 68,
475.
5 Mod. 402.
1 Chan. Caf.
11.
1 Chan. Rep.
231.
Post 549.
(1)

Where upon
shewing
Cause new
Affidavits
may be read
to support
the Rule.

(2)
Affidavits taken before
Commissioners, according
to 29
Car. 2. c. 5.
must be in a
Cause in
Court.

S. C. 5 Mod.
74.
3 Lev. 426.

(3)
Where an
Affidavit of a
Person pilloried may be
read.
Vide post
513, 514, 689.

O B L I G A T I O N.

See Cro. Jac.
192, 203, 208,
290, 338, 322,
603, 677.
2 Lev. 35,
166, 220.

Henderfon *versus* Foster. Hill. 3 W. & M. B. R.

(1)
Sex triginta
libris, held
well.
2 Show. Cas.
422.
2 Rol. Abr.
146, 147.

In Debt the Plaintiff declared on a Bond, in trigint. & sex Libris solvend', &c. and upon Over the Conditions of the Bond were, sex trigint' libris, and it was held well, and no Variance; for it shall be taken as one Word, as tres vigint' dies Junii, was taken for the 23d of June. 1 Cro. 261.

S. C. 5 Mod.
281.
Vide ib. les
Pleadings.

Cromwell *versus* Grunfden. Pasch. 10 Will. III. B. R.

(2)
Quadrans li-
bris in a Bond.
Cro Car. 116.
Mo. 864.
2 Bull. 241.
Lutw. 422,
423.

In Debt upon an Obligation, the Plaintiff declared, Quod eum Robertus Erlin, primo die Julii 1674. per scriptum suum Obligatorium concessit se teneri & firmiter obligari in Quadragesint. libris, &c. Et profert. &c. cujus dat. est eisdem die & anno. Up. on non est factum pleaded, the Jury found the Defendant made a Deed in hæc verba, and that was, in premid. vigin. in quadrans libris, dated the 1st of July, Anno Regni Car. 2. Millimo sexcent. septua' q^o, and signed Robert Erlwin, conditioned to pay 20l. and if this be the same Deed, &c? Et per Cur'.

Bond made
by Erlin, sub-
scrib'd Erlwin,
Variance not
material.
2 Show. 504.

1st, The Variance between the Name signed, which is Erlwin, and the Name in the Obligation, which is Erlin, is not material, because Subscribing is no essential Part of the Deed; Sealing is sufficient: The Bond is a Deed without it, and so it is of the Year of the King. Vide Yelv. 193.

Insensible
Words re-
jected.
Vide prox.
pag. pl. 3.
2 Mod. 285.
Sum in the
Obligation
express'd in
insensible
Words, ex-
plain'd by the
Condition.

2dly The Court held the Words in premid. vigin. and also the Anno Regni Car. 2. Millimo sexcent. septua' q^o, to be void for Insensibility; and being insensible shall be rejected, the rest being Sense without them.

3dly, They held that the Word quadrans had been void and insensible, if it had stood by it self, as in Case there had been no Condition, or if the Condition had been collateral; but since it has relation to the Condition, they would take it to be explained by the Condition, and to signify 40l. there being somewhat like quatuor or quadragint. in it, and there are Cases as strong and of as odd Words. Hob. 119. Quamquegenta for 500l. Yelv. 95. Cro. Car. 147. Cro. Jac. 208. 1 Brownl. 62. 2 Ro. Ab. 146, 147. Hob. 19. doubted. In most Cases where the Gent. or Gint. or the Sex or

Sept. are right, the Obligation has been held well. Vide 2 Jones 48. 1 Cro. 416, 418. 2 Cro. 338.

4thly, An Impossible Date is no Date; and where there is no Date, the Plaintiff nevertheless must declare of it as made at a certain Time, and it is better to rest there without *cujus dat. est eisdem*, &c. *q. gerens dat. eisdem*; for that ties it up to the Bond mentioned in the Declaration, and if that be taken to be the express Date, then there is a Variance; and the Court held, That if the Plaintiff's Declaration had been *gerens dat.* it had certainly been naught, because that could refer to nothing but the express Date; but being *cujus dat.* the Court would stretch it of the real Date, which is the Delivery, and not of the express Date, because that being insensible, and as no Date, it could not properly be applied to that. Vide 2 Yelv. 193.

And the Chief Justice denied the Case 2 Cro. 196. and held, That if H. declares on a Bond, as bearing Date the 6th of May, he cannot upon *non est factum* give in Evidence a Bond bearing Date at another Day; but he may give in Evidence a Bond that bears Date the 6th of May, tho' it was delivered at another Day. Adjudged.

Wells *versus* Tregusan. Mich. 7 Ann. B. R.

DEBT on a Bond for 100 l. Defendant demands Oyer of the Condition, which was, Whereas the Defendant is truly indebted to the Plaintiff in 50 l. Now the Condition is such, That if the Defendant do not pay the said 50 l. on or upon, &c. Then the Obligation to be void, &c. and pleads, That he did not pay the said 50 l. The Plaintiff demurred and had Judgment, for when the Condition recites a Debt, and after lays an Obligation not to pay it, 'tis in that repugnant. Vide 1 Sid. 209. 1 Lev. 77. 39 H. 6. 10. 4.

(3)
Condition of
a Bond (reci-
ting a Debt)
not to pay, is
repugnant.
See 2 Show.
15, 16, 504.
1 Lev. 77, 85.
Raym. 61.
2 Saund. 79, 80.
1 Mod. 285.

Occur

Vide Vaug.
190, &c.
3 Leon. 36.
6 Mod. 66.
Cart. 65, 66.
2 Keb. 350.

Occupant and Occupancy.

Oldham *versus* Pickering. Mich. 8 Will. III. B. R.

Estates pur
auter vie are
only Assets
for the Pay-
ment of
Debts, not of
Legacies, un-
less given
thereout ex-
pressly; nor
distributable.
Vide ante
415, &c.

IN Attachment sur Prohibition the Case was briefly thus: Thomas Oldham being seised of a Messuage in the County of Chester, to him and his Assigns for three Lives, died intestate without Children, leaving only Anne Pickering his Sister: Administration was committed to Margaret Oldham the Plaintiff, whom the Defendant now sues in the Spiritual Court of Chester for Distribution, and to exhibit an Inventory, which she exhibited and omitted thereout the Estate pur auter vie, whereupon the single Question was this, Whether an Estate pur auter vie be not distributable in like Manner, as Intestates Goods and Chattels are, according to 22 & 23 Car. 2. by Force of 29 Car. 2. c. 3. which enacts for the Amendment of the Law, That an Estate pur auter vie shall be devisable, and if no such Devise thereof be made, the same shall be chargeable in the Hands of the Heir, if it shall come to him by reason of a Special Occupancy, as Assets by Descent; as in Case of Lands in Fee-simple; and in Case there be no Special Occupant thereof, it shall go to the Executors or Administrators of the Party that had the Estate thereof by Virtue of the Grant, and shall be Assets in their Hands.

And after a long Argument by Cheshire for the Plaintiff, and by Ward for the Defendant, the whole Court, viz. Holt, Rokeby, Turton and Eyre, unanimously gave Judgment, That the Prohibition should stand, and that an Estate pur auter vie belonging to an Intestate, was not distributable; for notwithstanding this Alteration by the Statute, it remains a Freehold still; and the Amendment of the Law in this Particular, was only designed for the Relief of Creditors; that if it came to the Heir by reason of a Special Occupancy, it should be in his Hands Assets by Descent, that is, liable to the Payment of those Debts where the Heir is chargeable, and of those only; but if there was no Special Occupant, then it should go to the Executors or Administrators, i. e. they shall be in the Room of the Occupant, and it shall be Assets in their Hands, i. e. they shall be bound to pay the Debts of the Deceased to the Value thereof; so that it is not so much

much as Assets to pay Legacies, except such as are devised particularly thereout, the Statute making it Assets only for this particular Intent, to pay Creditors; and no Debts appearing in this Case, the Administrator is as it were the Occupant, and shall not be compelled to make any Distribution thereof, as he shall of Goods and Chattels, according to 22 & 23 Car. 2.

Offices and Officers.

Jones versus Pugh. Mich. 3 W. & M. B. R.

CASE for disturbing the Plaintiff in his Office of Aicar-general. A Special Verdict was found, viz. That the Bishop of Landaff granted the Office of Aicar-general to the Plaintiff and J. S. habend. conjunctim & divisim, exercend. per se vel sufficien. deputat. It was objected, That a judicial Office could not be granted to two, for if they differ, nothing can be done: Answer, That may be said of four Judges, as in B. R. and in ministerial Offices, as two Sheriffs: The Court held the Grant good, and said, If an Office be granted to two, and one dies, the Office does not survive, but determines; as if two Sheriffs, and one dies, the other cannot act; otherwise if granted to two and the Survivor of them.

See 1 Lev.
2, 76.
2 Lev. 71,
150, 245.
3 Lev. 200,
145, 288.
1 Lutw. 38r.
1562.
Raym. 53.

(1)
Judicial Office may be granted to two; but if one dies, it shall not survive, unless said to the Survivor.
Vide 1 Mod. 95, 96.
4 Mod. 17.
1 Vent. 296.

Dominus Rex versus Kemp. Trin. 7 Will. III. B. R.

S. C. 4 Mod. 276, 277.

A Scire Facias was brought to repeal Letters Patent, where by King Charles the Second granted to the Defendant Kemp the Office of Searcher in the Port of Plymouth. The Case was, King Charles II. had granted this Office to A. durante beneplacito; and afterwards by other Letters Patent, reciting the first, granted it to B. for Life, to commence after the Death, Surrender, or Forfeiture of A. Afterwards B. surrendered to the King, who in Consideration of the Surrender, granted the Office to the Defendant Kemp, to commence after the

(2)
King grants an Office to A. durante beneplacito, and afterwards grants the same to B. to commence after the Death, Surrender, or Forfeiture of A. the later Grant is good.

Death,

Death, forfeiture, Surrender, or other Determination of the Estate of A.

It was objected, That the Patent and Grant to B. was void, because A.'s Estate, being at Will, could not be surrendered nor forfeited. Also an Estate of Freehold cannot depend upon an Estate at Will.

Office at Will is at the Will of the King and not of the Party, and may be surrendered.

Et per Cur'. An Estate at Will in Lands cannot be surrendered, because 'tis determinable by the Will of either Party; but such an Office at Will is not properly at the Will of both Parties, but at the Will of the King only; the Party cannot determine his Will, but by Surrender; for if it be an Office of Trust, a meer forbearance to execute will be an Offence, and fineable; and Surrender is the constant Practice in such Cases. So did the Chief Justices Hale and Scroggs.

King's Tenant at Will may forfeit, and there must be an Inquisition.

2dly, It may be said forfeitable in some Measure, and the King's Tenants at Will may be said to forfeit; for in Case of Forfeiture, the King will be informed by Inquisition before he determine his Will, and then upon the Return of the Inquisition the Office is forfeited; but if it were an Estate for Life, there must be a Scire Facias to repeal the Letters Patent.

3dly, If the King had turned out A. the Grant to B. may take Effect, tho' not immediately, yet after the Death of A. and the King shall appoint another in the mean Time.

A Freehold to commence in futuro, may be in a Rent de novo, or in an Office. Vid. Post. 577.

4thly, That a Freehold of Lands cannot be granted to commence in futuro, or depend upon an Estate at Will; but a new Office, or a Rent de novo, may be created to commence in futuro, &c. for 'tis the Creature of him that makes it; and it is no otherwise in being than it is in Grant. And the King doth not grant a Reversion, but in Reversion; and that not in respect of a particular Estate, but because he is pleased to grant in futuro.

Culliford *versus* De Cardonell. Hill. 8 Will. III. B. R.

(3)
Bond given by Deputy to Principal to pay him half the Profits of the Office, good. See 6 Mod. 234, &c. 3 Keb. 551, 659, 678. 3 Keb. 711, 717. Post. 468.

I A Debt on an Obligation; on Oyer the Condition was, That whereas the Defendant was made Deputy to the Plaintiff in his Office, if he pay the Plaintiff half the Profits, then, &c. The Defendant pleaded the Stat. of 5 & 6 E. 6. Et per Cur'. This Bond is not within the Statute, because the Condition is not to pay him so much in Gross, but half the Profits, which must be sued for in the Principal's Name; for they belong to him, tho' out of them a Share is to be allowed to the Deputy for his Service.

Saun.

Saunders *versus* Owen. Trin. 10 Will. III. B. R.

S. C. 3 Mod.
386.
Vide Raym.

In an Assize of Novel Disseisin for the Office of Clerk of the Peace of Kent, the Recognitors found a special Verdict, viz. That the Earl of Winchelsea being Custos Rotulorum of that County, made P. Owen Clerk of the Peace, to hold at his Pleasure, by Writing under his Hand and Seal; and because the Justices of Peace at Sessions scrupled to admit him upon this Paper, the Lord Winchelsea came into Court, and said, I nominate P. Owen to be Clerk of the Peace according to Act of Parliament.

53. (4)
Custos Rotulorum may appoint the Clerk of the Peace without Deed. See 3 Mod. 150, quere 147.

And the Court held, That it always belonged to the Custos Rotulorum to nominate the Clerk of the Peace, but the Clerk of the Peace was removable whenever the Custos was removed or changed; and moreover was removable at the Will of the Custos till 32 H. 8. which makes him to continue in quousque the Custos shall continue in. Now by the late Act, he is to continue for Life; and tho' the Words be, Give and Grant to him; yet it is only an Appointment, and consequently may be without Deed: That it cannot be a Grant from the Custos, or enure as such, is plain, because the Custos is only at Will; and he that has an Office at Will, cannot make a Grant for Life, because there is no original Estate sufficient to bear it; therefore this must enure as an Appointment, or the Execution of a Power given by the Statute; like a Power to an Executor to sell, or a Tenant for Life to make Leases; the Consequence of all which is, That this was a good Appointment, tho' without Deed; for whatever is to take Effect out of a Power or Authority, or by Way of Appointment, is good without Deed; otherwise where it takes an Effect out of an Interest, and is to enure as a Grant; for then, if it be of a Thing incorporeal, it must be by Deed. Held upon a Writ of Error of a Judgment in the Common Pleas.

Whatever is to take Effect out of an Authority, or by Way of Appointment, is good without Deed.

Anonymus. Mich. 11 Will. III. B. R.

Serjeant Darnell moved against the Clerk of the County Court for granting a Replevin without taking a Bond or Surety of the Plaintiff to prosecute; but the Court made no Rule, because it was a stale Cause of Complaint near two Years ago; besides, 'twas only a single Instance; but the Court said, that when it grew into a Practice, as if a Sheriff constantly or frequently used to let Persons at large without Bail, then it is an Abuse of his Office, and the Court will interpose. Per Cur. Holt absente, B'ring your Action.

(5)

S. C. 6 Mod.
38, 234.

Godolphin *versus* Tudor. Mich. 3 Ann. B. R.

(6)
Bond by De-
puty to pay a
certain Sum
out of the
Salary or
Profits is
good, but
where it is
without rela-
tion to the
Salary or Pro-
fits, void.
Vide ante
466. pl. 3.
3 Keb. 552.
659, 678, 711.
717.

SIR William Godolphin being Auditor of Wales made a De-
puty quoadm in se bene gesserit, who by Articles of Agreement
between them, was to have the Fees, and in Consideration
thereof, to pay Sir William 200 l. per Annum, and save him
harmless. In Debt on the Bond for Performance, Judgment
was given against the Plaintiff: 1st, The Court held this an
Office within the Statute, 5 & 6 E. 6. c. 16.
2dly, The Court held, That where an Office is within the
Statute, and the Salary is certain, if the Principal make a De-
putation, reserving a lesser Sum out of the Salary, 'tis good:
So if the profits be uncertain, arising from Fees, if the Prin-
cipal make a Deputation, reserving a Sum certain out of the
Fees and Profits of the Office, 'tis good, for in these Cases the
Deputy is not to pay, unless the Profits rise to so much; and
tho' a Deputy by his Constitution is in Place of his Principal,
yet he has no Right to the Fees, they still continue to be the
Principal's, so that as to him, 'tis only reserving a Part of his
own, and giving away the rest to another; but where the Reser-
vation or Agreement is not to pay out of the Profits, but to pay
generally a certain Sum, it must be paid at all Events, and such
Bond is void by the Statute.

Lee *versus* Drake, Trin. 4 Ann. B. R.

(7)
Case for dis-
turbance him
in the Exer-
cise of the
Office of Pa-
rish-Clerk.
Vide 6 Mod.
19, 21, 233.
4 Mod. 418.

CASE wherein the Plaintiff declared, Quod cum extitisset
Clerk of such a Parish, the Defendant disturbed him in the
Exercise of his Office, and hindered him to sit in the Clerk's
Seat, per quod he lost the Profits of his Office. It was objec-
ed, That this was rather a Service or Employment than an Of-
fice; that if it be an Office, it is Ecclesiastical, for of common
Right the Parson appoints the Clerk, and the Court will not in-
tend a Custom; and unless a Clerk comes in by the Election of
the Parishioners according to Custom, he has not a temporal
Right; and the Court will not grant a Mandamus for a Clerk,
without an Affidavit that he is appointed by the Parish. 2dly, It
does not appear that any Fees appertain unto this Office, and
no Action lies at Common Law for Disturbance in the En-
joyment of a Seat in the Church, without a temporal Right,
and so it is here. Adjournatur.

Vide ante 435, Non-Attendance is good Cause of Forfeiture of
an Office.

Office for the King:

Vide Hard.
11, 12.
3 Lev. 290.
Vaugh. 62,
64, 153.

Layton *contra* Manlove. Mich. 2 W. & M. In Canc.

SEVERAL voluntary Escapes being committed by Manlove the Warden of the Fleet, an Inquisition was found, and the King granted the said Office to Layton; and now the Commissioners of the Great Seal refused to seal the same, being of Opinion that the Inquisition was void, and ought to be quashed, because it does not find what Estate Manlove had in the Office; for there are two sorts of Inquisitions, the one to inform, and that need not be so certain, Mo. 308. the other to best and entitle the King to grant, and that must be certain. Jones 71, 77. 3 Cro. 895. And here no certain Estate is found to best, and a *Melius inquirendum* cannot supply this Defect; for where an Inquisition is defective and uncertain, that cannot be supplied by *Melius inquirendum*; but where it finds some Points and not others, and that which is found, is well found, there may be a *Melius inquirendum*. Per Holt C. J. Pollexfen C. J. and Nevil J.

(1)
Inquisition finding some Points well, and nothing as to others, may be supplied by *Melius inquirendum*; otherwise if defective in the Points found.

Linch *versus* Coote. Hill. 8 Will. III. B. R.

TENANT for Life, Remainder to his first Son in Tail, Remainder to J. S. in Fee: Tenant for Life is attainted of High Treason, and dies without Issue. It was objected, That the whole Estate being vested in the King by 33 H. 8. without any Office finding the Special Matter, he in Remainder cannot enter, for the Statute vests it in the King like a general Office; and if a general Office had been found, it would have been supposed a Fee. Holt C. J. No other Estate vests in the King by Act of the A^{ss} of Parliament, than the Party attainted had; just as if a Special Office had been found: And therefore in this Case, as in that, the Remainder-Man may enter on the King, his Estate being determined, for the Statute saves the Rights of others; otherwise where an Office finds an Estate in Fee in the Party attainted; for then it must be abolished by *Crabrese* or *Amoveas manum*. Vide Dyer 335. b. Hob. Sheffeld and Ratcliffe, Moor 109. 3 Cro. 640. Dy. 354. pl. 230.

(2)
A. Tenant for Life, Remainder to B. in Fee; A. is attainted. King seizes. B. may enter on the King; otherwise if an Office had found A. seized in Fee.

Orders of Justices of the Peace.

[*Vide Titles, Apprentices, Bastards, Justices of the Peace, Poor, Sessions.*]

Inter Inhabitan' Dumbleton and Beckford. Pasch.
7 Will. III. B. R.

(1) **O** In a Certiorari was returned an Order of Sessions in Gloucestershire. A Girl of near thirteen Years old had been at Dumbleton in the said County, and had always lived there with her Grandmother; her Father was legally settled at Beckford in the same County: She wanting Relief, was by the Order charged on Beckford, because her Father was settled there. 'Et per Cur'. The Order must be quashed; for tho' till eight Years Children are counted Parish-children, yet they must afterwards have Maintenance from the Parishes where they themselves are settled, and for any Thing appears she may have gained a Settlement.

Anonymus. Mich. 7 Will. III. B. R.

(2) **I** In Orders to discharge Apprentices, the very Discharge under Seal need not be returned. *Vide post pl. 4.*
I f an Apprentice be discharged from his Master, the Statute requires that the Discharge be under the Hands and Seals of four Justices of Peace; but in a Certiorari to remove the Order, 'tis sufficient in the Return to take Notice of the Order so made; for 'tis not necessary to retitine the Discharge it self.

Dominus Rex *versus* Randall.

(3) **B** y a Certiorari two Orders were removed from the Sessions of Middlesex; the 1st whereof recited, That whereas R. Randall had lately taken a House at Hoxton, designing to sell Ale and Beer there; and whereas the House had never been inhabited but by Merchants and Men of Quality, and there were Alehouses enough in Hoxton already, therefore 'tis ordered that

no Licence be granted to any House in Hoxton wherein Ale was not formerly sold, and that no Licence should be granted to Randall: The second Order recited, That whereas a Licence was surreptitiously gotten by Randall from two Justices of Peace, that yet his House should be suppressed from brewing of Ale: And it was moved to quash these two Orders, because by 3 & 6 E. 6. c. 25. the Quarter-Sessions cannot controul two Justices of Peace in this Affair. Per Holt C. J. This Difference has been taken: If Authority be given to two Justices of Peace to do an Act, and from that Act there is no Appeal, then it may commence at the Sessions; but if an Appeal be given, then they cannot begin at the Sessions, as 43 Eliz. and 18 Eliz. till 3 Car. 2. But the true Objection here is, That except for Disorder the Justices of Peace cannot at their Sessions, suppress an Alehouse licensed by two Justices of Peace; and the Order was quashed.

Dominus Rex versus Gately. Mich. 7 Will. B. R.

S. C. 5 Mod.
139, 140.

OR a Certiorari it was moved to quash an Order of Sessions for the Discharge of one Edward Green from his Apprenticeship to the Defendant Gately; the Fact was, That Gately was a Mountebank, and being at a Place in Yorkshire, where he kept a publick Stage, Green was by Indenture bound Apprentice to him in this Manner, viz. to Robert Gately, Surgeon, to learn the Trade he now useth; and immediately he went upon the Stage, and ever since continued in the Employ; after which, being with his Master Gately in Middlesex, he complained to the Justices that his Master did not teach him the Trade, upon which they discharged him; this being done, Green set up the Trade of Mountebank himself; Mr. Northey moved to quash the Order, the Justices being willing, because they were imposed upon: 1st, He excepted to the Form of the Order, that they ordered the Servant to be discharged from his Master, whereas the Discharge should be mutual. 2^{dly}, Because the Stat. 5 Eliz. in discharging Apprentices is confined, and extends only to Apprentices mentioned in that Clause, and there neither Surgeon nor Mountebank is mentioned: And tho' a Surgeon may be a Trade within the Statute, which a Man cannot exercise without serving an Apprenticeship to, because that Clause of the Statute is general; yet this part of the Statute relating to the Discharge of Apprentices, extends only to Trades there mentioned. Per Car. As to the first, the Discharge of the Servant is by Consequence a Discharge of the Master; and as to the second, The Clause of the Statute relating to the Discharge of Apprentices, is general, and goes to all manner of Apprentices, even to those of Mountebanks, as it was adjudged in Hawksworth's and Hillary's Case, 1 Saund. 314. But afterwards the Court was of Opinion, that the

(4)
Power to discharge Apprentices, extends only to such Trades as are specially named in the Statute. Ante Pl. 3.

the Power of discharging reaches only to the Trades mentioned in the Statute, among which a Surgeon is not mentioned; for that tho' as to the serving seven Years Apprenticeship, a Surgeon comes under the general Terms of Arts and Mysteries; yet the Power of discharging reaches only to the Trades particularly mentioned, and this Point was not stirred in Hillary's Case; and in Watkin's Case 2 Keb. 822. Hale C. J. was of another Opinion.

S. C. 5. Mod.
208, 209.

Inter Inhabitan' Paroch' Oswell and Woking.
Pasch. 8 Will. III. B. R.

(5)
Sessions may
affirm or
quash, but not
supercede an
original Or-
der, or make
a new one.
Vid. Faref. 10.
Post. 483, 608.

AN Order was made upon Appeal, setting forth, That by the Order of two Justices, upon a Controversy before them between the Parishes of Woking and Oswell, a poor Person was removed to Oswell, and that upon Complaint of the Church-wardens of Oswell, the Sessions ordered their Order to be superseded, and that the Person should be removed to Woking aforesaid; and it was objected, That the Act of Parliament only gives the Sessions Power to affirm or quash, but not to supersede an Order, or to suspend it for a Time; and that the Case before them being for the Parish of Woking, an Order made by them for another Parish, not concerned, viz. the Parish of Woking, must be void, and that the Writ aforesaid would not help it, because Oswell was the Parish last mentioned. Per Cur'. Superse-
ding is not a proper Writ, for there is a Difference between a Superse-
deas and a Repeal: A Commission of Oyer and Terminer that is superseded, may be revived by Procedendo, without grant-
ing a new Commission, but that cannot be in the Case of a Re-
peal, tho' this Writ is commonly used by Justices of Peace up-
on such Occasions; and then there is a plain Difference between
Woking and Woking, for by what appears they may be two dis-
tinct Parishes: But no Judgment was given, for the Cause was
referred to a Judge of Assize.

Inter the Inhabitants of the Parishes of St. Nicholas and
St. Helen. Trin. 8 Will. III. B. R.

(6)
Where No-
tice shall be
presumed.
Vide Post.
Pl. 17.

TWO Orders were made for settling one Rice, a poor Man, the first by two Justices, the other by the Sessions on Ap-
peal, confirming the former; the Fact was, Rice being six
Years ago legally settled at St. Nicholas, clandestinely came into
the Parish of St. Helen, and lived there without giving Notice
to the Officers of the Parish of St. Helen during all that Time;
they sent him back to the Parish of St. Nicholas, &c. And the
Question was, Whether living in St. Helen's so long as six
Years,

Pears, should not induce the Court to presume Notice and other Things requisite well done to gain a Settlement? Et per Cur'. No Person, that is not a removeable Person, is to give Notice; as he that rents a Tenement of 10 l. per Annum, a Servant, &c. need not give Notice, because they cannot be disturbed: In this Case, if it had appeared upon the Order, That the Parish of St. Helen had taken Notice of him, and looked upon him as one of the Parish, as by relieving him, making him an Officer, &c. there after so long a Time, we would have presumed Notice given, because the Notice need not be read; for the Church-warden to whom it was given, and the Witnesses attesting the Matter may be dead; but here 'tis returned on the Order, that he clandestinely removed himself, so that he might easily continue in the same Manner; wherefore in such Cases we must construe the Statute strictly; and therefore the Order was confirmed.

Inter Paroch' Trobridge and Weston.
Mich. 8 Will. III. B. R.

IT was moved to quash an Order of two Justices, which recited, Whereas B. is, as we are credibly informed, the Place of his last legal Settlement, not adverting, that it was the Place of his last legal Settlement; as it ought: for that the Statute says, the poor Person shall be removed to the Place where he was last legally settled; and it was quashed.

Note, Mich. 3 Ann. B. R. it was held, That legal Settlement, and last legal Settlement are the same Thing, because by every new Settlement the Precedent is discharged.

Anonymus. Mich. 8 Will. III. B. R.

AN Order was made by two Justices to remove a poor Person, and Exception was taken, That it did not appear by the Order, that the Justices were of the Division, or that either of them was of the Quorum: The last was held a good Exception, but the first over-ruled, for in that the Statute is only directory.

Inter Inhabitant' Chittinston and Penhurst.
Mich. 8 Will. III. B. R.

AN Order for Removal of a poor Person was quashed, because it was not said that one of the Justices was of the Quorum; Holt C. J. said, This had been doubted, and perhaps

S. C. 5 Mod.
325.

(7)
Informed that B is the Place of legal Settlement, ill.
Vide Post. Pl. 23, 26. & Page. 492, &c. lb.

(8)
Removing need not be by Justices of the Division: Post. Pl. 30.

S. C. 5. Mod.
321, 322.

(9)
One Justice for Removal must be of the Quorum.
ad.

adjudged otherwise before; but that he was of a different Opinion; for this being a special Authority, it must appear to be pursued.

Dominus Rex versus Dobbyn.

(10)
Justices refusing in the County, not enough.

A N Order of two Justices was quashed, because it did not appear they were Justices of the County, or for the County, but only residing in the County.

S. C. 5 Mod.
329.
Vide Post.
Pl. 16. & 34.

(11)
Orders made upon 43 Eliz. c. 2. must be at the Quarter-Sessions.

Dominus Rex versus Turnock. Mich. 8 Will. III. B. R.

INDICTMENT for refusing to relieve and maintain Eliz. the Wife of his Son John Turnock, according to an Order made in the Sessions, which Order was set forth in the Indictment in hæc verba, viz. Ad generalem Session' Pacis tent. apud Marl. in & pro Com. Wilts, &c. and at the Motion of Mr. Eyre, the Indictment was quashed; because the Order was only said to be made at the general Sessions, and not at the general Quarter-Sessions, for the Quarter-Sessions are appointed by 2 H. 7. c. 4. tho' it appears by the same Statute, that there may be a general Sessions at other Times, and 43 Eliz. c. 2. f. 7. appoints Orders in these Cases to be made at the general Quarter-Sessions.

Inter Inhabitan' of Much-Waltham and Peram in Essex. Mich. 8 Will. III. B. R.

(12)
Bastard born pending an illegal Order of Removal from A. is settled in A. Vide 1 Salk. 131.
Post. 485, 528, 532.

MR. Comyns moved to quash an Order of Sessions for the Settlement of a Bastard-Child of E. L. She being big with Child, a little before her Delivery, was removed by the Order of two Justices of Peace, from Much-Waltham to Peram; before the next Sessions she was delivered at Peram of a Bastard-Child: At the Sessions Peram appealed, and the Justices adjudged the Woman to be legally settled at Much-Waltham, and ordered her to be sent back thither; after which an Order was made for settling the Child at Peram, which Comyns moved to quash, because, tho' regularly Bastards must be maintained where born; yet in this Case, where there seems to be a Contrivance, it shall not be so, as in Tuning's Case, 2 Bul. 349. Whensoever an Order is reversed, all Things happening subsequent thereunto, shall be avoided thereby: This Child, being born pending the Order, shall be esteemed in Law to be born in that Parish, whereunto the Mother on the Appeal is returned back: The Court seemed to agree this, and a Rule was made to shew Cause, but none was shewed.

The

The Case of the Parish of Amner, Mich. 8 Will. III. B. R.

THIS Case was, At the Complaint of the Churchwardens of Terrent-Keinston in Dorsetshire, to Sir John Morton and John Gould, two Justices of the Peace of the said County, concerning a poor Man and his Wife; they the said Justices adjudged him to be last legally settled at Tirrin-Crawford, upon which they appealed; and there it was ordered, That it appearing to the Sessions that he was last settled at Amner, therefore they discharge Tirrin-Crawford, and order the poor Man to be removed to Amner: This was quashed upon the Motion of Mr. Serjeant Gould, because this was to make an original Order, which the Justices at Sessions have no Power to do; they might have reversed the first Order, and ordered the Party to be carried back to Terrent-Keinston, but they could not remove the Party to Amner, a third Parish, who was no Ways concerned in the Order or Appeal; and if they are really chargeable with it, it must be at the Complaint of Terrent-Keinston to two Justices of the Peace.

(13)
Sessions on Appeal cannot send to a third Place, nor Party. Post pl. 20, 25, 32, 45, and 58.

Inter the Inhabitants of the Parish of Chittinston and Penhust. Mich. 8 Will. III. B. R.

AN Order was made to remove a poor Person from Chittinston to Penhurst, and this was quashed, because 'twas not said that one of the Justices was of the Quorum: Holt C. J. said, That some indeed had been of Opinion that an Order was good, notwithstanding this Omission, and perhaps it has been so adjudged; but he was of Opinion, That this being a special Authority to Justices out of Sessions, it ought to appear that that Authority was exactly pursued.

(14)
Authority given to Justices of the Peace must be exactly pursued. Vide Faresly 99.

Dominus Rex versus Matthews. Hill. 8 Will. III. B. R.

MR. Mountague moved to quash an Order for maintaining a Bastard-Child: 1st, Because 'twas not said the Child was likely to become chargeable: And 2^{dy}, The Defendant was ordered to pay 18 d. per Week indefinitely, without limiting any certain Time: Shower answered, That no Order relating to a Bastard-Child can be quashed, except the reputed Father be present in Court, quod Curia concessit; however this being a hard Case, a Rule was made to shew Cause; and being stirred again the next Term, the Court would not quash it, till the reputed Father came into Court; and the first Exception was

(15)
Upon Motion to quash an Order of Bastardy, the reputed Father must be present in Court.

over-ruled; for 'tis self-evident, That every Bastard-Child is likely to become chargeable.

Purnall's Case. Hill. 8 Will. III. B. R.

(16)
Vide 5 Mod.
329
Ante pl. 11.
Post pl. 34.

A N Order upon H. for maintaining his Daughter, was quashed, because it was rected to be made ad Generalem Sessionem Pacis, and not ad Quarteralem Sessionem Pacis, according to the Statute 43 Eliz. c. 2.

Inter the Inhabitants of Talbury and the Hamlet of Foston in Scropton. Hill. 8 Will. III. B. R.

(17)
Nothing will amount to Notice in writing to make a Settlement that is not specified in 3 & 4 W. & M. c. 11.
Ante pl. 6.

A N Order was made by two Justices of the Peace in Derbyshire, to remove Robert Floud to Foston in the Parish of Scropton. Upon Appeal the first Order was quashed, and the Party ordered to be removed to Talbury, and the Matter of fact being now stated specially to the Court; the Case was,

Floud was born in Talbury, and served seven Years Apprenticeship there, which ended in the Year 1693: Since 1693, he lived in Foston and other Places out of the Parish of Talbury, and the Blacksmith that lived at Foston dying, and the Inhabitants wanting one, in 1694 Floud went thither, and rented the Shop and a Chamber of the Widow of the former Blacksmith for a Year, at 52s. per Annum, with the Consent of the Bailiff of the Lord of the Manor: Here he worked publicly, was publicly employed by the Parishioners, and particularly by the Bailiff of the Lord of the Manor, the Vicar, and the Justice of Peace; and now having never given Notice, nor rented a Tenement of 10 l. per Annum, or exercised any Office, the Question was, Whether this publick Way of living was not tantamount and equivalent to Notice in writing, which was only designed to prevent clandestine Entries and Livings. Et per Cur. This publick Notice taken by the Parish, might perhaps have satisfied the Stat. 1 Jac. 2. but there being Doubts concerning the Notice prescribed by that Act, the 3d and 4th W. & M. c. 11. was made to explain it, and this later Statute hath particularized the Notice, and what shall be tantamount to it, and what not; but this is not among the Particulars of the Statute, for which reason the Order was confirmed.

Hat-

Hatton's Case. Hill. 8 Will. III. B. R.

AN Order was made by five Justices to maintain a Bastard Child; and it was objected by Broderick, That the Complaint is not laid to be by any Parish or Officers there, but only of a Town which may include several Parishes; but the Court held that well enough. 2dly, That the Order is under the Hands of five Justices, whereas it should be only the two next; but the Court held that well, for the Statute is not restrictive to two, but there must be two at least. 3dly, That it does not appear that either of those was a Justice of Quorum; upon this it was quashed, but the Party was bound to appear at the next Sessions.

(18)
Order of B.
sturdy under
the Hands of
more than
two Justices
well.
Post pl. 22.

Inter Inhabitan' Cockfield and Boxstead. Hill.

8 Will. III. B. R.

ANNE TALBY was by Order removed from Cockfield to Boxstead; and this Order being appealed from, was confirmed at the Sessions; but the Sessions after that made an Order of Review, and quashed the former Order of Sessions, because made by Surprize. Et per Cur'. The Order of Review must be quashed; for the Justices have no Power after the first Sessions.

(21)
Order of B.
sturdy under
the Hands of
more than
two Justices
well.
Post pl. 22.

Dominus Rex versus Harding. 8 Will. III. B. R.

ACertiorari was granted to the Lord Mayor and Justices of Peace of London, to remove an Order before filling up of a Procedendo was prayed. The fact was, the Servant of one Harding complained to the Sessions, that her Master was hi at rear to her for Wages; On hearing the Matter, both Parties agreed to refer it to Sir Thomas Love, late Lord Mayor, to be determined; which was done accordingly by Order of Sessions: He made an Award or Order, but before Report made thereof, this Certiorari was now brought; whereon a Procedendo was now prayed. Et per Cur'. A Judge of Nisi Prius, by Consent of Parties, may make a Rule to refer a Cause; but the Sessions cannot do so tho' by Consent: They may refer a Thing to another to examine, and make Report to them for their Determination; but cannot refer a Thing to be determined by the other: And therefore the Certiorari was filed and no Procedendo granted.

(22)
Order of B.
sturdy under
the Hands of
more than
two Justices
well.
Post pl. 22.

(23)
Order of B.
sturdy under
the Hands of
more than
two Justices
well.
Post pl. 22.

Inter the Inhabitants of the Parish of St. Mary le More
and Heavy-Tree in Devonshire.

(21)
Settlement
by Payment
of Parish
Rates.
Vide post
521. B. 1. and
pag. 536.
1 Show. 12.

FACY was settled at Heavy-Tree, and afterwards went into the Parish of St. Mary le More in Exeter, and took a house there at one Pound per Annum, wherein he lived a Year and a half, and paid the Rates and Taxes due for the said house; and the Justices at Sessions held, That the Rate for a house, without a Rate on his Person, was not sufficient to make a Settlement; but the Court of King's Bench quashed this Order for this Cause, and held him settled at St. Mary le More.

Dominus Rex *versus* Beard.

(22)
Order of Ba-
stardy ill, be-
cause Exami-
nation by one
Justice only.
Ante pl. 2,
10, 18.
Post pl. 34.

A Order made by two Justices of the Peace in Suffex, ad- judged Beard to be the Father of a Bastard-Child, which was quashed, because it appeared thereby, that the Examination of the Woman was by one Justice only, tho' the ordering Part thereof was said to be made by both; and Beard was bound over to the next Sessions.

Inter Inhabitan' St. Giles Cripplegate and Hackney.
Pasch. 9 Will. III. B. R.

(23)
Place of last
legal Settlement
must be
adjudged.
Vide ante pl.
7. post pl. 26.
and post pag.
491, 492.

WHEREAS Complaint has been made to us, that Elizabeth Fulford, Wife of Uriel Fulford, is lately come into the Parish of St. Giles Cripplegate, and is likely to become chargeable to the same; and whereas on Oath made by the said Eliz. Fulford, it appears that her Husband was last legally settled at Hackney; these are therefore, &c. Quashed, because there is no Judgment of the Justices concerning the last legal Settlement, but only the Oath of the Woman.

Dominus Rex *versus* Barebaker. Pasch. 9 Will. III. B. R.

(24)
To maintain
his Bastard till
the Age of
fourteen, ill.

ORDER upon B. adjudging him to be the Father of a Bastard-Child, and ordering him to pay 3 s. per Week till the Child attain the Age of fourteen Years, was held wrong; for they have no Authority due to tax the Parish, by obliging him to maintain the Child as long as it shall be chargeable to the Parish.

Anonymus. Pasch. 9 Will. III. B. R.

AN Order made by two Justices of the Peace for settling a poor Person, was quashed by the Sessions; but because it did not appear that it came before them by Writ of Appeal, without which they have no Jurisdiction, this Order of Sessions was quashed.

(25)
Where the Sessions quash an Order, it must appear to be on Appeal. Ante Pl. 13, 30.

Inter the Inhabitants of Berry and Arundel.

Pasch. 9 Will. III. B. R.

WHEREAS Complaint hath been made to us, That Jacob Duckin with his Wife and Children, came from his Place of Abode and last legal Settlement in Berry to Arundel: We therefore require you, &c. to enquire, for there is no Adjunction of the Justices, which was his last legal Settlement, but only a Complaint, that Berry was, which doth not appear, whether true or false.

(26)
Want of Adjunction of last legal Settlement. Post. 491, &c. lb. & ante Pl. 7.

Elizabeth Ashley's Case. Trin. 9 Will. III. B. R.

TWO Orders were removed by Certiorari, but the Return was quashed; because the Return in the Schedule annexed to the Writ was not made by two Justices, but by the Clerk of the Peace, who was not the Person to whom the Certiorari was directed; and thereupon a new Certiorari was granted.

(27)
Return by the Clerk of the Peace, ill. Vide Pl. 431, 699, 701.

The Case of Chesterfield. Trin. 9 Will. III. B. R.

JERRISON was a Servant to Sir Paul Jenkinson in Waltham; afterwards he left his Service and was put out by his Master Sir Paul Jenkinson, to a Barber in Chesterfield, who was to teach him to shave and make Periwigs, for which he was to have s. l. from Sir Paul: Jenkinson continued a Year in this Employment, according to Covenants between Sir Paul and the Barber, to which Jerison was no Party; and the Court adjudged that this did not make a Settlement at Chesterfield, because it was no Service; and that the said Jerison was thereby no more than a Boarder there for his Education, which is no Settlement to make a Settlement.

(28)
Covenant between the Master and a third Person, the Servant not being Party, makes no Apprenticeship. Post. 533.

Do.

Dominus Rex *versus* Brown. Trin. 9 Will. III. B. R.

(29)
Appeal from
Order of Ba-
stardy must
be to the first
Sessions after
Notice to the
Father, of the
first Order.
Ante Pl.
11, 16.
Post. Pl. 34.

AN Order was made, adjudging Brown to be the Father of a Bastard Child, May 2, 1696: And in the Michaelmas Sessions following, the said Order was discharged: Now both Orders being here, the later was quashed, because it did appear thereupon, that Michaelmas Sessions was the first Sessions after Notice given to the reputed Father, of his being so adjudged; for tho' 18 Eliz. appoints the Appeal not to be to the first Sessions after the Order of the two Justices, but the first Sessions after the Party hath Notice of the said Order; yet by the Statute of H. 5. there might be a Sessions intervening, as in this Case, between the Order by the two Justices and the Order of Sessions; and it must appear on the Order, that this was the first Sessions after Notice had of the former Order; After which the first Order by the two Justices was quashed, because there was an Adjudication therein, that the reputed Father should pay a certain Sum weekly, till the Child be of seven Years of Age, whereas they cannot charge the Father for any certain determinate Time, but as long as the Child shall be chargeable to the Parish.

Elizabeth Ashley's Case. Trin. 9. Will. III. B. R.

(30)
Justices need
not be said to
be of the Di-
vision.
Ante Pl. 8.

EXCEPTION was taken to an Order of two Justices, to remove, &c. because it was not said that the two Justices were of the Division, according to 13 & 14 Car. 2. Sed non allocatur; For the Court held the Statute as to this to be only directory and not restrictive or qualificatory, as that of the Quorum is.

(31)

Inter the Inhabitants of Ditchurch and Eastchurch
Hill. 9 Will. III. B. R.

AN Order was made at the Quarter-Sessions originally, let- ting forth, That whereas the Parish of Ditchurch was over-burdened with Pools, and the Parish of Eastchurch had no Pool, the Parish of Ditchurch should be annexed to the Parish of Eastchurch, and that the Occupiers of Lands there should contri- bute 20 s. per Annum, by equal monthly Payments, to Dim- church, as long as that was over-burdened with Pools, and East- church had none: And it was objected by M^r. Brewer, That the Justices of Peace cannot alter Parishes and annex one to ano- ther. 2dly, That the Sessions cannot make an original Order.

Per

Per Holt C. J. There are two ways by 43 Eliz. to make one Parish contributory to the poor of another Parish, viz. either the Justices may the particular Persons in and to that Parish which cannot relieve its own poor; or they may assess the whole Parish in a certain Sum, and leave it to the Churchwardens and Overseers to levy the same, of particular Persons, which was well done in this particular Case; but so much of it as concerns the assessing of the Parishes, is void, and the rest good. But the Court took time to advise.

Inter Inhabitan' Paroch' Downhead and Broadchalk in Wilts. Hill. 9 Will. III. B. R.

TWO Justices of the Peace made an Order to remove John Raynsford, his Wife and three Children, from Rowborough in Somersetshire, to Broadchalk in Wilts, which Order, on an Appeal to the Quarter Sessions, was confirmed; after this Raynsford, with his Wife and three Children, came into the Parish of Downhead; whereupon two Justices, reciting the former Order and Confirmation, ordered him to Broadchalk; and now it was objected to this Order, That it did not appear that one of the Justices was of the Quorum. Mr. Northey on the other Side argued, it was not necessary here, because it was not an original Order, but an Order made in Pursuance of an Order of Sessions. Et per Cur'. A Settlement by Order upon Appeal, binds all Parties: If the poor Man goes to the Parish from whence he is removed, the Sessions must see their Order obeyed; but if he goes to another Parish not concerned in the Appeal, then it is proper for two Justices of the Peace to remove him to the Parish where he was settled by the Sessions by original Order; but then it must appear therein that one of them was of the Quorum. Quashed.

Inter Inhabitan' King's Norton in Wigorn. and Swolhill in Warwic. Hill. 9 Will. III. B. R.

An Order was made to remove a poor Woman from Yarly in Worcestershire, to Swolhill in Warwickshire; afterwards two Justices in Warwickshire made an Order to remove her to King's Norton in Worcestershire, whereupon two Justices of Worcestershire sent her back to Swolhill; and upon an Appeal to the Sessions in Warwickshire, the Justices confirmed her Settlement at King's Norton, and then an Order was made by two Justices of the Peace to execute the said Order: All these Orders being brought up by Certiorari, Carthew moved to quash all except the first, all the others being made coram non iudice; for when an original Or-

(32)
After Order confirmed on Appeal, if the Person goes to a Pl. with not Party, he must be removed by original Order. Vide Anto Pl. 13, 20, 25. & Post. 345. & 58.

(33)
Order of two Justices binds against all Parishes, till repealed. Vide Post. Pl. 49, & 52.

dec

It is made, it binds all Persons until it be set aside, and it cannot be set aside but on Appeal to the Sessions. Mr. Northey on the other hand insisted, That tho' in this Case two Justices could not send the Woman back again to Yarley, yet they might send her to a third Place, as King's-Norton is in this Case; so that as to King's Norton 'tis but an original Order; but the Court seemed to be of another Opinion, for then King's-Norton might send to Yarley, and there would be a perpetual Circuit; but seeing in this Case King's-Norton had appeared at the Sessions, and had been concluded there, they would not quash the Order, and several other Questions arising, all was referred to a Judge of Assize.

Dominus Rex *versus* Shaw. Trin. 10 Will. III. B. R.

(34)
Appeal from
Order of Ba-
rardy, must
be to the
General-
Sessions.
Ante Pl. 11,
16, & 19, &
Post. Pl. 34.

AN Order was made by two Justices of the Peace, adjudg-
ing Shaw to be the reputed Father of a Bastard; where-
upon he appealed to the next Quarter-Sessions of the Peace, af-
ter Notice, where the Order of the two Justices was discharged;
and now it was here moved to quash the Order of Sessions, be-
cause by the Statute the Appeal must be to the next General Ses-
sions, and there might have been a General-Sessions before the
general Quarter-Sessions, as in London and Middlesex, where
there are four General-Sessions in a Year, besides the general
Quarter-Sessions. Quashed for this fault.

Anonymus. Mich. 10 Will. III. B. R.

(35)
Order to re-
move A. and
his Family, ill
for genera-
lity.
Post. Pl. 41.
Farell. 54.

AN Order made to remove three Men and their Families,
was quashed, quia too general; for some of their Family
might not be removeable. If a Man settled at A. marries a
poor Woman who is settled at B. and has Children by a former
husband; his Wife shall be removed with him to A. but her
Children, such of them as are above seven Years old, shall not be
removed; those under shall be removed, but that only for Nur-
ture; for they shall be kept at the Charge of the other Parish:
But such a general Order sweeps all away.

Anonymus. Mich. 10 Will. III. B. R.

(36)
First Order
failing, all
subsequent
fall to the
Ground.

PER Northey, it was settled in the Case of Wooton-Basset,
that if the first Order be naught, no subsequent Order on an
Appeal can make it good. Hill. 11 Will. 3. B. R. Same Rule
was taken by Holt C. J. and both Orders quashed; and Trin.
2 Ann. the same Resolution between Selon and Ripley.

The Case of the Parish of St. Leonard Shoreditch
Mich. 10 Will. III. B. R.

THE Churchwardens, &c. made a Rate for Relief of the Poor, which was confirmed by two Justices, and therein nothing was cared for the personal Estate, but all upon the real, which was erroneous: Several Inhabitants appealed to the Sessions, and the Rate was there quashed; and the Churchwardens, &c. ordered to make a new Rate upon both real and personal Estates: In the new Rate there was still a great Inequality, the real Estate being rated ten Times more, in Proportion, than the personal Estate, for this Reason several Inhabitants appealed again, and this Rate was likewise vacated by Order of the Sessions. And now Northey and Shower moved to quash these Orders, urging, That the Sessions could only relieve particular Persons over-rated or grieved, but could not set aside the whole Rate at once. Sed per tot. Cur. viz. Holt, Rokeby and Turtton. Surely the Justices at Sessions, upon an Appeal of particular Persons grieved, may, if they see Cause, set aside the Rate, for the Act is, that if any Person or Persons find themselves aggrieved, it shall be lawful for the Justices at the Quarter-Sessions to take such Order therein, as to them shall be thought convenient. 43 Eliz. c. 2. sect. 6. And in either of these Cases, of the first, or second Rate, the Justices could not have given Relief without setting aside the whole Rate, because the Rate was burdensome to a whole Set of Men; and they may make a new Rate themselves, or order the Churchwardens and Overseers to make a new Rate, as was done in this Case, they having it in their Discretion to make a new Rate at Sessions, or remand it to the Churchwardens, &c. to make one. The Orders were confirmed.

(37)
On Appeal from a Poor's Rate, the Sessions may quash the whole, and make, or order Churchwardens, &c. to make a new Rate. Vide ante 473. Farely 10.

If Sessions set aside a whole Rate, they may make a new One;

Or refer it back to the Churchwardens, &c.

Domina Rex vs. Albertson Mich. 10 Will. III. B. R.

A Order was made, reciting, Whereas it appears to us, two Justices of the Peace, That Mary Spencer, Wife of Jonathan Spencer, Merchant, was on the 20th of March, 1695, delivered of a Male Bastard Child, which is likely to be chargeable, &c. And whereas it appears to us, that the said Jonathan Spencer was employed on Board the Ship called the Pembroke, in his Majesty's Service, at Cadiz, and was not within the King's Dominions when the said Child was begotten, or born; and whereas it appears that Albertson had carnal Knowledge of the Body of the said Woman, during the Absence of her Husband, and that he begat the said Child; we therefore adjudge him to be

(38)
Child born of a Female Convert, the Husband being at Sea, from before the Time of Beggetting to the Birth, is a Bastard; but that must appear in the Order. Vide ante pl. 11, 16, 19, 34, &c.

the reputed father, and to pay weekly, &c. And the said Order being confirmed upon Appeal, was brought here by Certiorari; and now Shower and Upton moved to quash these Orders, because 18 Eliz. c. 3. gives the Justices Power only to meddle with Bastards born out of lawful Matrimony; so that tho' this Child should be a Bastard, yet the Justices cannot meddle with it, because he is born in lawful Matrimony: But it does not appear in this Order, that this Child was a Bastard; for 'tis only said, the father was absent when the Child was begotten, or born, in the Dissundide; also it doth not appear, but the husband was in England during the Time intermediate between the Begetting and Birth. Per Cur. He is a Bastard who is born of a Man's Wife, while the husband, at and from the Time of the Begetting to the Birth, is extra quatuor Maria: In Case of a real Action by him, the Tenant may plead general Bastardy; and on a Writ to the Bishop, he will certify him to be a Bastard; being then a Bastard as to Descend, there is no Reason why he should not be a Bastard as to all other Intents, and in particular, a Bastard within 18 Eliz. which is a remedial Act: Also when a Child is born in Adultery, he is born out of the Limits of lawful Matrimony, the Law then taking no Notice of the husband; and so, tho' we must quash this Order, because it does not appear that the husband was extra quatuor Maria, during all the Space of Time intervening between the Begetting and the Birth; yet we hope Care will be taken to make a new Order without this fault. Quashed. But the Defendant was bound over to appear at the Sessions.

The Case of the Churchwardens of Topham Hill.
10 Will. III. B. R.

(39)
Justices may
make an Or-
der, that the
last Overseers
pay the suc-
ceeding what
remains in
their Hands.
Vide post
§24, §25, §31.

THREE Justices took the Account of the Churchwardens, &c. of Topham, for the Year 1697, and adjudged that there was thereupon due from them to the Parishioners of Topham, 69 l. 8 s. 10 d. for the Re-payment whereof to the succeeding Overseers for the Year 1698, the Justices made an Order, to which it was excepted, That the Justices had no Power to make such Order, but only to issue Warrants to distrain; but the Court ruled the Order to be well made, and confirmed the same.

Dominus Rex versus Gregory.

(40)
Wages.

AN Order was made by the Justices of Peace, for the Defendant to pay 40 s. for Wages generally; and because 'twas not said for what Wages, 'twas moved to quash it; for they can only

only settle Wages in Husbandry: But per Cur'. We will intend it for such Wages, since the Contrary does not appear.

Vide ante 442. pl. 5.

The Case of Sylvanus Johnson.

The Justices of Sussex, on Complaint that J. was come into the Parish of Brood, in the said County, and was likely to become chargeable to the said Parish; and adjudging Sandherst in Kent to be his last legal Settlement, ordered that Johnson, and his Wife and Family, should be removed to Sandherst, which was quashed; because Non constat what is meant by his Family, and some of them may have a legal Settlement at Brood, tho' J. had not.

(41)
To remove his Wife and Family, ill. Ante pl. 35. Vide Far. 54.

Christ's Hospital's Case. Trin. II. Will. III. B. R.

A Poor Child was left in Christ-Church Hospital; upon Complaint of the Wardens of the Hospital, two Justices made an Order on the Overseers of the Poor of the Parish, to receive and maintain the Child; but this Order was quashed, because it was not said, That the Parents were unknown, or likely to become chargeable to the Parish: For tho' a Child of three Months old be helpless, yet the Parents are bound to provide for it. As to the principal Matter which was contested, viz. That the Hospital was bound to provide for poor Children there exposed; the Court thought there was nothing in that.

(42)
Poor Children dropped in Christ-Church Hospital.

Inter the Inhabitants of St. Nicholas, Guilford, in Surrey, and Killington in Sussex. Trin. II. Will. III. B. R.

NORTHEY moved to quash an Order of two Justices to remove a Woman and her Bastard-Child from A. to B. whereas it appeared in the Order, that the Child was born at C. Holt C. J. The Bastard must be kept where 'tis born.

(43)
Bastard settled where born. Vide ante 427, 482. Post 522, 532.

Inter the Inhabitants of the Precinct of Bridewell, and the Parish of Clerkenwell. Hill. 11 Will. III. B. R.

(44)
Justices have no Jurisdiction to remove poor Persons to or from extraparochial Places. But Note, in the Case of the Inhabitants of Stokelane and Dolting. Hill. 11 Annæ.

B. R. it was adjudged by Parker C. J. and the whole Court, that

by Virtue of 13 & 14 Car. 1. cap. 12. sect. 21. the Justices may exercise the Powers given by 43 El. and stat. 48. in all extraparochial Places, containing more Houses than one, so as to come under the Denomination of a Vill or Township. See pl. 9. Vide post 437. fol. 261.

Inter the Inhabitants of St. Michael Bedenham and Kington-Bowsey. Hill. 11 Will. III. B. R.

(45)
Order of Reversal on Appeal, binds not a third Parish, not Parry.

Post pl. 58. & pag 524, 527. Ante pl. 11, 13, 20, 25.

H. was sent by Order of two Justices from St. Michael Bedenham to Kington-Bowsey, and that Order was reversed upon an Appeal to the Sessions. Then the Appeal went to Bedenham, and Bedenham sent him to D. and a Motion was made to quash this Order, because the Order of Reversal upon the Appeal as to Kington-Bowsey, was conclusive against all the Parties. But the Court held, That the Determination upon the Appeal between other Parties, ought not to bind as to a third Parish, which was no Party.

Anonymous. Hill. 11 Will. III. B. R.

(46)
Special Order ought not to conclude to the Opinion of the Court.

A Special Order of Sessions drawn up Specially, in Order to have the Opinion of the Court, was concluded; And if the Court should be of Opinion, then, &c. which was held naught; for the Justices ought to determine one Way or other, and not make a Special Conclusion, referring to the Court; but it was referred to the Judge of Assize.

Inter Inhabitan' Paroch' Eaton-Bridge and Inhabitan'
Paroch' Westram in Kanc'. Hill. 11 Will. III. B. R.

A N Order was made at the Quarter-Sessions, for the Relief of poor Prisoners in Gaols, and providing Materials to set them at work, upon the Statutes 14 Eliz. c. 3. and 19 Car. 2. c. 4. whereby a Sum was assessed on the several Parishes, not exceeding what is allowed by both Acts; but the Order was quashed, because they ought to have made distinct Orders upon the different Statutes, the Money to be levied by Virtue of each Statute being applicable to different Purposes.

(42)
Poor Prisoners.
See Order made at the Quarter-Sessions, 11 Will. III. B. R. for the Relief of poor Prisoners in Gaols.

Inter the Inhabitants of the Forest of Dean and the Parish of Linton. Trin. 12 Will. III. B. R.

H Lived ten Years in the Forest of Dean, and then died, and left several Children: Two Justices made an Order to remove them to Linton in Herefordshire. Et per Holt C. J. If a Place be a reputable Parish, and have Church-wardens and Overseers of the Poor, it is within 43 Eliz. tho' in Truth it be no Parish; but if it be merely extraparochial, as the Justices cannot send to such a Place, so they cannot send from it: As it is exempt from receiving, so it shall not have the Benefit of removing, for they have not proper Persons to complain. Persons in extraparochial Places must submit to private Charity, as all Persons did at Common Law before 43 Eliz. which makes, that every Parish shall keep their own Poor; in Consequence of which the Jurisdiction of Removals was first set up before the Statute 14 Car. 2. for unless the Poor were removed to their own Parishes, every Parish could not maintain their own Poor. But the Statute of 43 Eliz. does not extend to extraparochial Places. Could I started a Question, If the Justices of the County where the Parish, wherein he was last legally settled, may, might not make an Order upon the Parish to make a Rate for the Relief of this poor Man in the extraparochial Place; because not having gained a Settlement there, he remains an Inhabitant of that Parish still. If the Man may be removed for Want of Relief? Holt C. J. Quash this Order, and then go and get an Order: Forasmuch as H. was settled in the Parish of Linton, and is not able to provide for himself: These are the Reasons.

(43)
Extraparochial Places.
Vide Ante, Pl. 44.

Inter

Inter the Inhabitants of Chalbury and Chipping-Farringdon. Trin. 12 Will. III. B. R.

(49)
Parish, upon
whom an ori-
ginal Order
is made, can-
not remove
till that be
reversed.
Vide Ante
Pl. 33.
Post. Pl. 52.

H was removed by Order of two Justices, from the Parish of A. in Warwickshire, to Chalbury in Oxfordshire, from thence by Order of two Justices, to Chipping-Farringdon in Berkshire. It was objected, That Chalbury ought to have appealed, and got the Order upon them discharged, which Holt C. J. agreed; For sending the poor Man to another Place, is falsifying the first Order, which cannot be done, but by Appeal; for the Order of two Justices is a Determination of the Right against all Persons, till it be reversed: Chalbury should have appealed from the Warwickshire Order, and got that set aside, and sent the Man back thither, and the Justices there should have sent him to Chipping-Farringdon; therefore naught.

Inter the Inhabitants of Ware and Stanstead Mount-Fitcher. Trin. 12 Will. III. B. R.

(50)

A Order was made by two Justices, to remove H. with his Wife and Children, from Ware in the County of Essex, to Stanstead in the same County. Exception was taken to this by M^r. Byre, 1st. Because it was, with Wife and Children. 2nd. Because it was said, it appears upon Examination before us, or one of us, &c. and the Examination ought to be before both, because both are to make the Judgment of Removal. M^r. Cowper would have distinguished this as the first Exception from the Case of Mich. 10 Will. 3. ante Pl. . . . Of his Wife and Family, because he might have Servants not removable, but Children ought to follow their Parents. To the second he said, That by 14 Car. 2. c. 12. the Complaint is directed to be made to any Justice, and in Consequence one Justice may examine; and it was only necessary that two should join in removing: Sed Car. contra in both. To the first Holt C. J. said, Suppose H. had put his Son out to Service at sixteen Years old at A. and accordingly he had served there a Year, and after the Father comes to live at B. himself, and the Son to live with him; such an Order would remove the Son, tho' he be not removable. To the second, Could J. say, the Statute directed, and the Practice was, to make Complaint to one Justice, and he grants his Warrant to bring the poor Man before two Justices, and then they two examine and remove.

Examination
must be by
both Justices.
See 6 Mod.
180.
Farell. 54.

Dominus Rex versus The Inhabitants of Long-Critchell.

Mich. 12 Will. III. B. R.

A Man was removed from the Parish of All-hallows to the Parish of Long-Critchell. He goes from Long-Critchell to P. They got several Orders from two Justices, by Writ of Execution of the first Order, to remove him from P. to L. But all of them were quashed, because P. ought to have made an original Complaint, and upon that have got an Order, and not have grafted on the Order of Removal from A. to L. tho' they might have used that as Evidence to induce the Justices to make such original Order; for P. is a third Parish, against which L. is not bound by the Order of Removal from A. to L. but may contest the Right of Settlement with them. Mr. Upton took an Exception, that the enforcing Orders did not appear to be made by two Justices, Quorum non: And Holt C. J. seemed to think that a good Exception, because such Persons as cannot make an Order, cannot execute it: But the Orders were quashed upon the first Reason.

(51)
Order of
Execution.See 5 Mod.
321, 322. and
to 473, 480,
488.Ante 436. Pl.
18. & Post.
Pl. 60.*Inter the Inhabitants of Thackham and Findon in Suffex.*

Hill. 12 Will. III. B. R.

A Poor Person was removed in 1694, from West-Starring to Findon; Findon does not appeal. In 1700 the Man comes to Thackham, and Thackham sends him by Order of two Justices to Findon; Findon appeals, and the Order was discharged. All three being now brought up by Certiorari, it was moved to quash the Order made upon Appeal, and urged that Findon was bound by the first Order from West-Starring to them, from which they never appealed, with respect to all the World, and are concluded to say, That the Place of his last legal Settlement was not with them: But in respect of the Distance of Time, the Court could not tell but he might have gained a new Settlement at Thackham, and that might appear to the Justices, and they might have good Ground to discharge the Order of the two Justices; then the Counsel offered to produce an Affidavit, That there was no new Settlement proved; but the Court held they could not examine that by Affidavit, nor enquire thereby into the Reason of making the Order. Ex motione Mr. Shelly.

(52)
Two Justices
Order not ap-
pealed from
binds the Pa-
rish upon
which it is
made, till a
new Settle-
ment is gain-
ed.
Vide Ante
Pl. 33, & 49.

Vide Post.

491.

1 Salk 67, 68.

(53)

Order for
discharging
Apprentice,
the Master
not appear-
ing.

Vid. Faref. 55.

Dutton's Case. Pasch. 13 Will. III. B. R.

MOVED to quash an Order made for the Discharge of an Apprentice: The Question arose upon the Clause of the Statute, which directs, That upon the Appearance of the Master the Apprentice may be discharged by four Justices, after the next Justice hath endeavoured to compose the Matter in Difference. In this Case it was objected, That Dutton the Master was bound over to appear, and did not; and the Justices have but a limited Jurisdiction; and 'tis expressly directed by the Act, that this Discharge is to be made on the Appearance of the Master; besides, there is another Remedy to be used on the Recognizance, which is forfeited by not appearing.

Per Cur. The Act must have a reasonable Construction, so as not to permit the Master to take the Advantage of his own Obstinacy; and it would be very hard, That supposing the Master is negligent and runs away, the Apprentice shall never be discharged: Afterwards Exception was taken, because it appeared upon the Face of the Order, That Dutton was a Collar-maker, & non constat what the Trade is, nor that it is within the Statute; like Comfort's Case, where one was bound to a Mantle-maker, when there was no such Trade within the Statute, nor at the Time of the Statute: And in this Case it was said, That the Justices might make the Master make Restitution of part of the Money, and that it hath been so adjudged.

1 Salk.

213, &c.

Post. 491.

Inter the Inhabitants of Watford and Wendover.

Pasch. 13 Will. III. B. R.

(54)

Apprentice
Order of
Complaint
Justices, and
be to the Ses-
sions of the
County, not
of the Cor-
poration.

TWO Justices of St. Albans, made an Order, That where-
as they were credibly informed, that Wendover was the
Place of H's last legal Settlement; but no where adjudged it to
be so, from this Order there was an Appeal to the Quarter Ses-
sions of St. Albans, where it was confirmed; and both were
quashed, the first, because there was no Specification of what was
the Place of his last legal Settlement; and the second, because the
Appeal ought to have been to the Sessions of the County, not to
the Corporation; and as it was, 'twas coram non iudice.

Inter the Inhabitants of Suddlecomb and Burwash.
Trin. 13 Will. III. B. R.

EXCEPTION was taken to an Order of two Justices, because it was only said to be complained by the Churchwardens, that the Person removed was likely to become chargeable, but not adjudged so by the Justices. Holt C. J. said, That the Justices cannot remove a Man, unless he be likely to become chargeable, for otherwise they might remove a Man of an Estate; and he took a Diversity, that where the Order is, Whereas it appears to us, &c. on the Complaint, &c. that J. S. is likely to become chargeable to the Parish, that will be well enough; but where it is, as here, Whereas Complaint hath been made, &c. that is ill: But it was agreed to be referred to the Judge of Assize. Postea, Pasch. 2 Ann. B. R. The Case of the Inhabitants of Darnall in Cheshire, the same Resolution. Postea, Pasch. 2 Ann. B. R. the same Resolution. It ought to appear, that the Person removed, is a Person removeable, and there ought to be a particular Averment, That he is likely to become chargeable.

(55)
Complaint
that H. is like-
ly to be
chargeable,
not enough
without Ad-
judication;
but, Whereas
it appears to
us, on Com-
plaint, &c.
that H. is like-
ly, &c. is suf-
ficient.
Ante 473,
478, 479.
Post 530.
Vide 6 Mod.
163, 164.
1 Sid. 99.
1 Lev. 84.
Raym. 65.
1 Show. 76.
3 Mod. 270.

Dominus Rex versus Johnson. Trin. 13 Will. III. B. R.

THE Justices of Peace at Newcastle in Northumberland, discharged an Apprentice by an original Order made at the Sessions, without any previous Application to a Justice of the Peace, to endeavour to compromise the Matter, as the Statute directs; and after several Debates it was adjudged, That if this had been a new Thing, the Court would have thought a previous Application to a Justice necessary; but there having been so many original Orders made at Sessions, brought into this Court and confirmed here, 'twas too late to call this Matter in question; so the Order was confirmed.

(56)
Sessions may
make original
Order to dis-
charge Ap-
prentice.
See 1 Salk.
67, 68.
1 Mod. 2.
1 Saund. 314,
316.

Minchamp's Case. Trin. 13 Will. III. B. R.

HE being a Merchant at Mile-End, two Justices bound a poor Girl Apprentice to him; he appealed to the Sessions, and the Order was discharged; because they thought it unfit to compel a Merchant to take an Apprentice; and now this Court on Consideration of the Matter, confirmed the Order of Sessions; because the late Act having made Persons compellable to take Apprentices, and given an Appeal to the Sessions, it was in the Discretion of the Justices at Sessions to determine, whether

(57)
Justices at
Sessions are
proper
Judges, whe-
ther fit to
oblige H. to
take Appren-
tice, or not.
Vide 6 Mod.
163, 164.
1 Salk. 66,
68, 381.

6 Mod. 164.
1 Show. 76.
3 Mod. 270.
Raym. 65.
1 Lev. 84.

ther it was or was not fitting to put an Apprentice upon any one; and therefore the Court would not disturb what the Sessions had done, but confirmed the Order.

*Inter the Parishes of Swanscomb and Shensfield. Pasch.
1 Ann. B. R.*

(58)
Order reversed is final only between the Parties: Order confirmed or not appealed from, is final as to all the World.
Ante pl. 45.

A Poor Man was sent by two Justices to Shensfield, and upon an Appeal the Order was confirmed; afterwards Shensfield sent him by an Order to Swanscomb: All these Orders being brought up by Certiorari, the Order to send him to Swanscomb was quashed, because by the Determination of the Justices in Affirmance of the Order on the Appeal, Shensfield was estopped against all the World to say, That was not the Place of his last legal Settlement; for the Justices cannot remove, but to the Place of the last legal Settlement, and giving any later Place of Settlement will discharge the Order on the Appeal; and the Difference is between an Order discharged and an Order confirmed upon Appeal, or not appealed from. In the first Case, the Matter is at large as to all Places, but the Place to which the poor Man was sent, which, upon the Appeal, was determined not to be the Place of his last legal Settlement. But in the later Cases, the Place to which he was sent, is bound, and the Order final and conclusive as to all the World.

S. C. 5 Mod.
149.

*Inter the Inhabitants of Weston Rivers and St. Peter's
in Marlborough.*

(59)
It is not necessary to shew in the Order, that the Person did not rent a Tenement of 10 l. per Annum.
Vide ante 491.
Post 524, 536.
Farsl. 54.

UPON an Order of two Justices, it was objected: 1st, That it was not said that the Woman was poor, &c. but lame and likely to become poor. 2dly, That it was not said she did not offer Security. 3dly, That it was said to be upon Complaint only, and not of the Churchwardens, &c. 4thly, It was not said she rented not a Tenement of 10 l. per Annum. The two last were the Objections chiefly insisted upon; and the Court was clear as to the first of these two, viz That it must be upon Complaint of the Churchwardens, &c. and so appear; but upon reading the Return, another Question arose; for the Return set forth at large, That upon Complaint of the Churchwardens and Overseers of the Poor concerning A. to the Justices; they the said Justices, one of the Quorum, made the following Order, in hæc verba: Forasmuch as Complaint hath been made to us, &c. so that it was urged, that the Defect of the Order was supplied by the Return of the Certiorari: As to the last of the four Exceptions, Holt C. J. said, That before 13 Car. 2. two Justices removed

removed by Consequence of Law, upon 43 Eliz. because that Statute makes Provision, That every Parish shall maintain its own Poor; therefore the Justices considered who were properly the Poor of a Parish, and they were held to be such as were there settled a convenient Time, which was thought a Month, so that a Month's Abode made an Inhabitant. Still there remained several Doubts, which occasioned 13 & 14 Car. 2. c. 12. upon which Statute the present Question arises, viz. Whether the Power to remove be not founded on 13 & 14 Car. 2. but on the Law, as it was before? And since such an Order would serve to remove before, why it will not serve now, since the Statute? Or whether 13 & 14 Car. 2. obliges the Justices to alter the Form of their Order: And this depends upon this Part of the Statute, viz. Whether it be by Way of giving Jurisdiction or Restriction? At another Day Hole C. J. pronounced Judgment: As to the Exception to the not averting that he did not rent a Tenement of 10l. per Annum, he said, the Secondary had searched the Records, and they are without this Clause, according to the Form of the Orders before 14 Car. 2. And this Order therefore is well enough; and if the Party rents a Tenement of 10l. per Annum, he may appeal to the Sessions: As to the other Exception, it is fatal, for no one can disturb a Man coming into a Parish, but they that have Authority to do it: A Complaint, ex Officio, from one not concerned, is nothing, it may be the Parish are willing to keep him; and as to the Return, that cannot cure the Order, for they had exercised their Authority before; and by the Certiorari they have no Power but to return the Order in hac verba; and therefore what they think fit to return farther, the Court can take no Notice of.

Defect of an Order not made good by Matter alleged in the Return.

On Certiorari Justices can only return the Order in hac verba. Vide 1 Salk. 147.

Inter the Inhabitants of St. George's and St. Olave's Southwark.

TWO Orders were returned, the first for settling a poor Man, one Thomas Gill, and the second a Confirmation of the first, upon an Appeal to the Quarter-Sessions: The first Order recited, That whereas Complaint hath been made to us, &c. That T. G. had of late intruded into the Parish of St. George's. We adjudge him to be lawfully settled at St. Olave's: These are therefore to require you to convey the said Tho. Gill, to the Parish of St. Olave's; and the Direction upon the Order was, To the Churchwardens and Overseers of the Poor of the Parish of St. Olave's. Quashed. For they ought, and can only order the Parish Officers where the Intuition is made, to make the Removal.

(60)
Justice cannot command the Officers of the Parish, whether H. is sent, to remove him. Vide ante 436. pl. 18. & 489. pl. 51.

Inter the Parishes of St. Andrew's Holborn and St. Clement's Danes. Mich. 3 Ann. B. R.

(61)
Sessions being
but one Day
in Law, may
alter their
Judgment
and make a
new Order;
but must cer-
tify the latter
only.
Vide 6 Mod.
287.
Post 605, 606,
608.

THE Court of Quarter-Sessions of Middlesex made an Order, and afterwards the same Sessions vacated it by a subsequent Order, and a Certiorari being brought, both Orders were returned thereon. Et per Holt C. J. You should not have returned the vacated Order, but only the latter. This is as if we disliking our Judgment, should the same Term make an Entry of two different Judgments, and return both upon a Writ of Error, which ought not to be: The Sessions is all one Day, and the Justices may alter their Judgment at any Time, while it continues: Thus, at the Old Bailey, you see Judgment de Pain fort & dure given, and yet, if the Party will plead, we will set aside that Judgment, and admit him to plead.

O U T L A W R Y.

1 Show. 80,
309.
2 Show. 60,
68.

(1)
H. outlawed
for Misde-
meanor, can-
not be there-
on fined for
the Fact.
See 1 Lev. 33,
34.
2 Lev. 49.
Reym. 17.
2 Chan. Cal.
44.

Rex & Regina *versus* Tippin. - - - 1 M. & W. B. R.

ONE was outlawed upon an Information for seducing a young Gentleman to marry a young Woman of a lewd Character, and fined 5000l. And it was moved in behalf of the Defendant, that he could not be fined upon the Outlawry, because in Misdemeanor the Outlawry does not enure as a Conviction for the Offence, as it does in Cases of Treason and Felony; but as a Conviction of the Contempt for not answering, which Contempt is punished by the Forfeiture of his Goods and Chattels; and if he might be fined now, he must be fined again upon the principal Judgment. And the first was held to be irregular, for the Outlawry in these Cases is not a Conviction, as appears by Fleta 42. Quamvis quis pro contumacia & fuga utlagetur, non propter hoc convictus est de facto principali.

Attorney-

Attorney General versus Baden. Mich. 5 W. & M.

A Does Money to B. on a Judgment, and to C. on a Bond; A. is outlawed at the Suit of the Obligor, and his Lands seized on the Outlawry; and the Question was, Whether the Consuee of the Judgment could extend these Lands? And it was held the Outlawry should be preferred, and that the King's Hands should not be moved, unless the Consuee could shew Covert and Practice between the Obligor and Obligee.

(2)
Vid. Ray. 17.
1 Lev. 33, 34.
2 Lev. 49.
The Plaintiff shall reverse it at his own Charge.

Adlame versus Colebatch. Pasch. 8 Will. III. C. B.

T WAS moved in C. B. that the Plaintiff might reverse an Outlawry at his own Charge, upon Affidavit, That the Defendant was actually in the Fleet in Execution for the Plaintiff in another Suit, and he knew it; and it was granted, because the Plaintiff should have brought him to the Bar by Habeas Corpus, and there have charged him with a new Declaration.

(3)
Where the Plaintiff shall reverse it at his own Charge.

Lee versus Millard. Mich. 8 Will. III. C. B.

A Like Motion was made upon Affidavit, That the Defendant lived publicly, and was denied. Et per Powell J. Such Motions are frequently granted in B. R. because 'tis a great Charge to reverse an Outlawry there; for the Defendant must appear in Person, but here he needs not, and the Charge is but 16 s. 8 d. not so much as a Bailiff's Fees for an Arrest. We have always denied this Motion of late. 2 Ven. 46.

(4)
Note, The Law is now altered in this Particular by Stat. 4, & 5, W. & M. 170, 373.

c. 18. Vide Post. Pl. 6. Sec. 1. Lev. 464. Cro. El.

Arthur's Case. Hill. 8 Will. III. B. R.

A RTHUR was outlawed for Felony upon five Indiments, and afterwards came in, and was brought to the Bar, and asked what he had to say, why Judgment should not be given? He produced five Writs of Error. Et per Holt C. J. If there be no Lands, the Attorney General may confess Error, and then he shall plead presently, and be tried upon the Indiments. If there be Lands, there must be a Scire Facias against the Lords, mediate and immediate, to shew Cause why he should not have Restitution. But if it be suggested on the Roll that he has no Lands, and the Attorney General confesses it, there needs no Scire Facias.

(5)
Error to reverse Outlawry for Felony; if there be Lands there must go a Scire facias; but if Attorney General confess on Record that there are none, no Scire facias is necessary.

Ano.

Anonymus. Mich. 10 Will. III. B. R.

(6.)
Defendant
need not ap-
pear in Per-
son to reverse
Outlawry,
except in
Treason or
Felony.
Vide ante
Pl. 4.

H Was outlawed in two Actions, one was 10 l. the other
for 40 s. and upon reverting the Outlawry, the Court took
Special Bail for the first, and an Appearance for the other, upon
4 & 5 W. & M. c. 18. Note, The Recognizance was taken pur-
suant to 31 Eliz. c. 3. Note, Now per 4 & 5 W. & M. one out-
lawed, except for Treason or Felony, need not appear in Person
to reverse an Outlawry, but by Attorney.

Symonis *versus* Bingoe and Cook. Pasch. 4 Ann. B. R.

(7.)
If two are
outlawed, Er-
ror to reverse
must be
brought in
the Name of
both, but one
may be sum-
moned and
severed.
Cro. El.
270, 278.

THE Defendant Bingoe being a feme, and waivered upon
Process of Outlawry, two new moves on her Behalf,
that upon giving common Bail, she might have Liberty to reverse
the Outlawry. Per Cur. The Writ of Error to reverse the Out-
lawry, must be brought in the Name of both the Parties that are
outlawed, and if one only appears, the other may be summoned
and severed, and then the Outlawry may be reversed for the Bene-
fit of him who appears only. Before it can be reversed for want
of Proclamations, the Party outlawed must give Bail to appear,
and to answer in another Action.

(8.)
If H. comes
in gratis, he
may reverse
without Bail;
otherwise, if
by Capi Cor-
pus, Cro. El. 706.

If the Party outlawed comes in gratis upon the Return of the
Capias, alias in pluries, he may be admitted by Motion, to re-
verse the Outlawry, for any other Cause, but want of Procla-
mations, without putting in Bail. If he comes in by Capi Cor-
pus, then he shall not be admitted to reverse the Outlawry, with-
out appearing in Person, as in such Case he was obliged to do
at Common Law; or putting in Bail with the Sheriff for his
Appearance upon the Return of the Capi Corpus, and for doing
what the Court shall order. Appearing by Attorney is an Indul-
gence by 4 & 5 W. & M. and the Bail is to be Special or common
in this, as in other Cases.

Of Pleading Outlawries in Bar or Abatement, Vide Cro. Car. 566.
3 Lev. 29. 1 Show. 8. And how to plead an Outlawry before or
after Judgment, see 1 Lutw. 10, 11. And how to plead it in the
same Court, and how in another, 1 Lutw. 40. 3 Lev. 50.

Oyer

Oyer and Shewing of Deeds, Writs, &c.

Vide Post.
658, 701.
Lutw. 1643.
2 Lev. 143.
1 Saund.
Hob. 217.
6 Mod. 18.

Salisbury versus Williams. Mich. 4 W. & M. B. R.

IN Debe on a Bond in the Grand Sessions of Wales, the Plaintiff omitted in his Declaration to make a Profert, &c. Judgment was for the Plaintiff, and now in Error this Omission was insisted on, and the Court held it only Matter of Form, of which no Advantage could be taken after Verdict, or on a general Demurrer, and therefore affirmed the Judgment. Sid. 249. Cro. Car. 190. Cro. El. 153, 217. 16 & 17 Car. 2. cap. 8.

(1)
Want of Profert, only Form.
Vid Stat 4, 5.
Anne c. 16.

Morris's Case. Trin. 7 Will. III. B. R.

IN Replevin, the Defendant avowed for a Rent-Charge, and made Title by a Will, and pleaded it with a Profert, and the Plaintiff insisted to have Oyer, alleging it was the Avowant's Fault to make a Profert of it, and he ought to take Advantage of it. *Ex per Cur.* He was not bound to plead it so; it is but Surplusage, and we will not compel him to give Oyer of it.

(2)
Upon Profert made unnecessarily, Oyer shall not be given.
Vid. 6 Mo. 28.
3 Lev. 50.

Roberts versus Arthur. Mich. 13 Will. III. B. R.

UPON the Profert of a Deed it remains in Court all that Term, but no longer, unless it be controverted; but Letters testamentary, or of Administration, do not remain in Court; for the Party may have Occasion to produce them elsewhere. Vide 36 H. 6. 30. *Per Cur.*

Where the Letters Patent pleaded, are recorded in the same Court where the Plea is pleaded, the Party need not shew them; but where in another Court he must plead them with a Profert in Cur', or the Exemplification of them under the Great Seal. *Per Holt C. J.*

(3)
Deed remains in Court all the Term it is produc'd; otherwise of Letters testamentary or of Administration. Where Parents must be shewn, and where not.
Lutw. 1644.

(5 Co. 76. 2 Lev. 142. Farel. 9, 38.

Lon-

S. C. 6 Mod.
27, 28.

Longavill versus The Hundred of Isleworth.
Mich. 2 Ann. B. R.

(4)
Denial of
Oyer where
it ought to
be granted, is
Error; other-
wise of
granting it,
where it
ought not.
6 Mo. 28, 29.

IN Debt against the Hundred of Isleworth; the Defendant pleaded in Abatement, caption del Robbers, &c. the Plaintiff replied nul Caption, &c. upon which it was demurred, and a Respondeas ouster awarded, and now all being the same Term, the Defendant craved Oyer of the Writ, and that being set forth, pleaded the general Issue. Et per Holt C. J. To deny Oyer where it ought to be granted, is Error, but not econtra: Therefore we ought either to grant, or to enter the Denial upon Record, that they may assign it for Error. If the Plaintiff will contest it, he may strike out the rest of the Pleading, and demur, in Order to obstruct the Oyer: And at another Day it was ruled, that the Defendant could not have Oyer, because he had already pleaded in Abatement, and having of Oyer is never to enable the Party to plead in Bar, but to plead to the Writ, which is done already, and therefore pass.

S. C. 6 Mod.
244.
1 Salk. 76,
ante 425.

Armit versus Bream. Mich. 3 Ann. B. R.

(5)
Where H. is
bound to
make a Deed,
he must set it
forth.

WHERE a Man has obliged himself to make a Deed, and is sued for not doing it; it is not enough to say, that he made the Deed, viz. Lease, Bond, &c. but he must set it forth, that the Court may judge of its Sufficiency; for it ought to be a good Deed; but if it be to deliver, or shew, or produce a Deed, that is, a Deed already made, there it is enough to say, that he delivered, or shewed, or produced it. Per Holt C. J.

S. C. 6 Mod.
237.

Cook versus Remington. Mich. 3 Ann. B. R.

(6)
Defendant
demands
Oyer of an
Indenture,
which he
ought to set
forth himself,
and the Plain-
tiff gives Oyer,
but imperfect,
it is
at the Defen-
dant's Peril.
See 3 Lev. 50.
1 Saund.

IN Debt upon a Bond, the Defendant demanded Oyer of the Condition, which was, to perform Covenants in an Indenture, and then demanded Oyer of the Indenture; and the Plaintiff gave it him, omitting an Indorsement, which was made before the Execution of the Deed; upon this Oyer the Defendant pleaded Performance; the Plaintiff replied and set forth the Indorsement, and prayed Judgment for the Variance. Et per Cur. 1st, The Defendant should have set forth the Indenture himself, being a Party to it, and should have pleaded Performance to all the Covenants therein. 2dly, The Plaintiff was not obliged to give Oyer of the Indenture, and tho' he did, yet being what he need not do, the setting it forth is not at his Peril, as where he is obliged

children to let it forth, nor let he concluded to say, "that there is
some confusion in the substance, but at Liberty as well as in the
Declarant himself, and let it forth, and the Court held, that as
the Declarant was bound to let it forth, to be bound to
know this Court, and must be, it is complete, and the Court
judgment was given in the affirmative."

Forworthy's Case. Hill. & Ann. B. R.

FOWORTHY placed his hand on the Bible, and there was a deep
 sigh in the presence of the Lord: At another time he came, and he
 said, "I am a poor man, and I am a poor man, and I am a poor man."

Bardon General and Special

Dominion Box and Gun Parfums

but the President in a better condition than otherwise they would

DARSONS has formed, combined, and attained to the

don; and Note, it was for Murder by exprefs Words,

Without any Non obstante; the Non obstante being taken
 upon in the Statute of W. & M. Gun Holes of 1688 for the

visit of Alliance, which would certify he had found Surety of

the Peace within eight Months after the Pardon; whereupon the Spirit of Abstinence had made Sir John &c. &c. said that

the Court ought not to allow the Pardon till thus certified, and

that this was a Condition precedent, by the Statute of Ed. 3.

and vindictive, moved, that the nation might not be alarmed; and that the world might not be deceived. But

Holt C. J. said, there was as good reason why the king should

person an Involvement of Duty, and, in the Court, as who a Subject should discharge an Appeal, which is the Suit of the Subject :

and that the King was by his Coronation-Oath, to shew Mercy

as well as to do justice. He said, the Statute of 2 Ed. 3, c. 3, meant only that the King should be fully informed before he nar-

murdering King, and the King would be truly informed, that he had pardoned and forgiven; and then the Brethren that, and other v-

criticize Statutes, was, for that after the Statute of Gloucester, 60 upon a Murder done it was usual to apply to the Law

Chancellor, and gain a Bachelor of Science degree and take the

gillions, with general Cleave in it; and this was the occasion of their redrawing Statutes.

the King in Person, to the Queen, the King himself might be ap

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(8)
b'nodus anO
ad non illi
ni bogado
Vien L'w.
1869
Gr. El. 484
5 Co. 49. 50.
Hurr. 21.
C. cap. 37.

(1)
Pardon for
Murder not
to be allow'd
without Writ
of Allowance,
certifying
Serries ta-
ken for the
Peace.
See 1 Saund.
361,
1 Lev. 25, 26,
120.
3 Lev. 136,
332.
Raym. 139,
370, 477.
Fanch. 153.

King may
pardon Mur-
der by express
Words.

Palatine Counties of Chester, Durham, &c.

by the Statute of the 12th R. 2. c. 2. great Bishops were upon more that would be sufficient for a pardon of Murder. They are to incur a Penalty &c. but this was found contrary to the Statute, and therefore was reversed by 16 H. 2. c. 28. which shows the necessity there is, that the King should have a Power to pardon; upon which the Pardon was allowed.

Foxworthy's Case. Hill. 1 Ann. B. R.

FOXWORTHY pleaded his Pardon, and there was a Mistake in the Proceedings: At another Day he came, and having got the Fault amended, it was allowed. His Creditors now moved that they might have Leases to charge him with Annuities, as in Custom, but the Court refused to do so. For per Holt. C. J. That might defeat the Queen's Pardon, by rendering him incapable of performing the Condition, which is, to go beyond the Seas, &c. and this is not unreasonable; for without the Pardon, the Attainder had continued, and he must have been hanged; and there is no Reason why the Pardon should put the Creditors in a better Condition than otherwise they would have been, to the Prejudice of the Party: for the Pardon was given for his Benefit, and not for the Benefit of his Creditors.

Palatine Counties of Chester, Durham, &c.

Willbraham versus Poley. Trin. 12. Will. III. B. R.

MR. Acherley moved the Court to stay the Return of a Writ of Error out of Chancery, to reverse an Outlawry in the County Palatine of Chester, according to the Opinion of my Lord Coke, 4 Inst. 214. quod vides: Sed non allocatur; for this old Usage is gone by 32 H. 8. c. 43. and 33 H. 8. c. 13. There were no Outlawries in Chester before

S. C. & Mod.
27. 15.

(2) One pardon'd shall not be charged in Custody with Civil Actions, Quær. Raym. 329. Co. 2. Co. 50. nisi

Vide ante
452.
2 Lev. 171,
233.
1 Clun. Cof.
41.

Error to the County Palatine of Chester.

before 33 H. 8. c. 13. for Coroners are there introduced by that Statute; and there was no Chief Justice in Chester till Q. Elizabeth's Time, for till then there being but one, there could be no Chief. Vide the Account of this Custom at large in Dyer 345, 320, 321.

Parish, Town, Vill, &c.

Vide 1 Mod.
251.
2 Mod. 237.
ante 486.
11 Co. 25. b.
Co. Lit. 125.
b.

Rudd *versus* Morton. Mich. 4 Will. & M. B. R.

UPON a Trial at Bar in Replevin, wherein the Defendant showed as Overseer of the Poor; the Question was, Whether Stratton was a reputed Parish of it self, or Part of the Parish of Biggleswade in Bedfordshire? Et per Cur'. To make Stratton a reputed Parish, within 43 Eliz. it must have a parochial Chapel, and Chapel-wardens and Sacraments, at the Time the Statute was made; and because the pretended Parish of Stratton had but one Chapel-warden, whose Office it was to collect the Rates taxed upon Stratton, and pay them to Biggleswade; they were held Part of the Parish of Biggleswade, and not a reputed Parish within 43 Eliz. and their having a distinct Overseer, and maintaining their own Poor, was not thought sufficient to make them a distinct Parish.

(1)
Evidence of
a reputed Pa-
rish, within
43 Eliz.
Vid. Cro. Car.
92, 124, 196.
4 Mod. 157,
158.
Post 572.
Raym. 67.

A Parish shall be intended a Vill, prima facie; adjudged Mich. 6 W. 3. Wilson *versus* Laws.

If a Place be named generally, that Place shall be taken to be and intended a Vill; adjudged Mich. 10 W. 3. B. R. Vinkelson *versus* Ebdon.

Vill, quid.
Vide 1 Inst.
115. b.
1 Lev. 78.
See Hob. 196.

Dominus Rex versus Barnard. Mich. 8 Will. III. B. R.

(2)
Regularly a
Constable is
to be chosen
in the Leet or
Turn; may
be in a Cor-
poration by
Custom.
See 1 Salk.
175, 380.
5 Mod. 127.
1 Mod. 13.
Aldyn. 78.

INDICTMENT, for that he being chosen Constable in a Corporation, according to Custom debito modo, refused to take upon him the Office; and upon Demurrer it was said per Holt C. J. That at Common Law, all Constables were chosen at the Leet: Where there is no Leet at the Turn: Whether by the Steward or the Pomage? has been a great Question: But without Question, a Corporation, of common Right, cannot choose a Constable: By Custom they may, as having the Government of the Place reposed in them; but then they must prescribe for it.

See 1 Chan.
Cas. 207, 211,
& post 509.

PARLIAMENT.

S. C. Par. 43.

Prideaux versus Morris. Trin. 2 Ann. B. R.

(1)
No Action
lies at Com-
mon Law a-
gainst an Of-
ficer for a false
Return of
Members to
Parliament,
unless where
the Right is
determined,
or cannot be
determined
in Parlia-
ment.
See 6 Mod.
45, 49.
1 Salk. 19, 20.
5 Mod. 311.
Pollexf. 470.
3 Lev. 29, 30.
Lutw. 88.
2 Sid. 168.
2 Lev. 50, 86,
114, 250.

In an Action on the Case for a false Return of Parliament-
men, against the Sheriff, the Plaintiff declared, That
whereas he was duly elected, the Sheriff returned A. B. to
be duly elected, who was, in fact, not duly elected. Mr. King
objected, That the Right of Election was only to be determined
in the House of Commons; for that it was a parliamentary Mat-
ter, which ought not to be tried here, no more than the Right of
Precedence. Mr. Eyre contra, That this Court may determine
what is an Act of Parliament, 8 Co. 1. Their Privileges Mo. 67.
1 Ro. 903. Dyer 275. the Right of Peerage; and here the Right
of Election is no otherwise in Question, than as it is incident to
the Fact. Holt C. J. The Cause of the Plaintiff's Suit is a
Wrong done out of Parliament, and whatever falls under the
Regulation of Law, and is done out of the Houses of Parlia-
ment, is subject to the Law of the Land; for Laws are to be
executed out of Parliament; but as for the Rules of the House,

as Sitting, Meeting, &c. they are within the House, and the Judges cannot know them, there being no Practice of them out of Parliament: But if the Parliament should make a Law concerning them, or they should become necessary to be determined on the Account of some other Matter cognizable by the Judges, the Judges must take Notice and determine them, as in Bynion's Case, 311. 1001.

King's Courts may judge of Parliamentary Matters incident. See 6 Mod. 451, 49.

And Holt C. J. seemed to be of Opinion: 1st, That for a double Return, no Action lay against the Sheriff before the Statute of 7 & 8 W. 3. c. 7. not only because 'tis the only Method the Sheriff has to indemnify himself; but when the Right comes to be determined in Parliament, one Indenture returned is taken off the file, and then there is no double Return. 2^{dly}, He seemed to think, that for a false Return the Party could have no Action, where there might be a Determination in the House of Commons, because of the Inconvenience of contrary Resolutions; and so if a Suit be between A. and B. A. is voted elected, B. cannot bring an Action, and say, that he was duly elected and returned, because his Name does not appear upon Record; and he is stopped to say, that A. was not duly elected and returned; but where the Right of Election, either is determined, or cannot be determined in Parliament, as in Case of a Dissolution, an Action lies for the false Return; for the Courts at Law can neither anticipate nor contradict their Judgment. Upon a Writ of Error of a Judgment in C. B. for the Defendant.

Domina Regina versus Paty, & al. Hill. 3 Ann. B. R. 5 Mod. 311, 312.

THE Defendants having been committed to Newgate by the House of Commons, were now brought into Court by several Writs of Habeas Corpus, and the Cause of their Commitment was returned to be a Warrant signed, Robert Harley, Speaker, requiring the Keeper of Newgate to take into his Custody, the several Persons, Defendants, for having committed and prosecuted an Action at Law against the Constables of Aylesbury, for refusing their Votes in the Election of Members of Parliament, in Contempt of the Jurisdiction and open Breach of the known Privileges of the House of Commons. Mr. Lechmere, Page, Mountague and Denton, who were of Counsel for the Prisoners, prayed that they might be discharged for several Reasons. 1st, Because the Warrant was not under Seal, as it ought to be. 2^{dly}, Because the Commitment was to remain during pleasure. 3^{dly}, Because they had done no unlawful Act; for the Prosecution of a Suit is lawful, and no Breach of the Privilege of that House. But Powell, Powys and Gould Justices held, 1st, That the Commitment was well enough in Form; because

(2)
On Commitments by the House of Commons, for Privilege, no Court can deliver on a Habeas Corpus: Held by three Judges against Holt C. J. See 1 Salk. 19, 20. 6 Mod. 45. 1 Mod. 145. 2 Lev. 114. & ante 502. 2 Show. 84.
it

Filing and continuing Original, no Breach of Privilege.

Authority of Commons circumscrib'd by Law. Post. 512.

Writ of Error is of Right in all Cases, except Treason and Felony. See 2 Show. 85, 98. 6 Mod. 130.

it was according to the usual manner of Commitments by that House. 2dly, That the House of Commons were the proper Judges of their own Privileges; and this Court was now estopped to say, That this was not a Breach of the Privileges of the House of Commons, or that the House of Commons had no such Privilege. Holt C. J. contra said, That this was no Breach of Privilege of the House of Commons; that the Commencing and Prosecution of an Action did not necessarily imply a going farther than the bare filing and continuing of an Original, which is no Breach of Privilege; he said, the Quing was no Breach of Privilege, nor can their Judgment make it so, nor conclude this Court from determining contrary; when the House of Commons exceed their legal Bounds and Authority, their Acts are wrongful and cannot be justified, more than the Acts of private Men: That there was no Question, but their Authority is from the Law, and as it is circumscribed, so it may be exceeded: To say, they are Judges of their own Privilege and their own Authority, and no Body else, is to make their Privileges to be as they would have them: If there be a wrongful Imprisonment by the House of Commons, what Court shall deliver the Party? Shall we say, there is no Redress, and that we are not able to execute those Laws, upon which the Liberty of the Queen's People subsists: To conclude, all Courts are so far Judges of their own Privileges, and intrusted with a Power to vindicate themselves, that they may punish for Contempts; but to make them, or any Court, final Judges of them, exclusive of every Body else, is to introduce a State of Confusion, by making every Man Judge in his own Cause, and subverting the Measures of all Jurisdictions.

And now a new Question was started and referred to the Judges, Whether the Queen ought to allow a Writ of Error in this or any other Case, ex debito Justitiæ, or ex mera gratia? And ten of the Judges were of Opinion, That the Queen could not deny the Writ of Error; but it was grantable ex debito Justitiæ, except only in Treason or Felony. Vide 2 Lev. Thurston's Case. Price and Smith held, That the Subject could not of Right demand them in any criminal Case: Then it was a Doubt, Whether any Writ of Error lay upon a Judgment given on a Habeas Corpus?

Coundell *versus* John. Hill 5 Ann. B. R.

(3)
Action lies not for a false Return, but upon the Statute 7 & 8 W. 3.

IN Case; the Plaintiff declared that he was elected Member of Parliament for such a Borough, pursuant to the Queen's Writ, &c. and that the Defendant returned two other Persons to be elected, and that he the Plaintiff petitioned the House, and was adjudged by them

them to be duly elected, and his Name ordered to be inserted in the Return, and the Name of the other to be rased. After Verdict, on Not guilty, the Defendant moved in Arrest of Judgment, that here is no Cause of Action; for it appears now, the Plaintiff has had the Effect of his Election; he is returned, he has his Place; there is nothing wanting wherein he can pretend himself injured, but the Costs he has been at in the Prosecution, and as to them it ought to be supposed, that the House considered of them. This was endeavoured to be made good upon the Statute 7 & 8 W. 3. But Sir Tho. Parker, for the Defendant, answered, That this Declaration cannot be taken to be founded upon that Statute, because the Fact was laid not agreeable to it, nor was it such an Action as was intended by the Statute, which differs from a general Action; for, first, the Action grounded upon a general Prohibition of a Statute, might not be for the Party only, but the Queen and Party in common; for a Fine is due to the Queen for the Breach of the Statute, as well as Satisfaction to the Party injured; *Super Cur.* Where a Statute introduces a new Law, by giving an Action where there was none before, or by giving a new Action in an old Case, the Plaintiff need not conclude *contra formam Statuti*. But if a Statute gives the same Action, with a Difference of some Circumstances, as double Damages, &c. the Plaintiff must either conclude, *contra formam Statuti*, or make his Case so particularly within the Statute, that it may appear to be so; and because he had not done it in this Case, Judgment was given for the Defendant.

See 6 Mod.
45, 49.
1 Salk. 19, 20.
5 Mod. 312.
Parsell. 13.
Pollexf. 470.
1 Lev. 129, 130.
1 Lev. 131.
1 Lev. 132.
1 Lev. 133.
1 Lev. 134.
1 Lev. 135.
1 Lev. 136.
1 Lev. 137.
1 Lev. 138.
1 Lev. 139.
1 Lev. 140.

Curia is re-
movable at
the Will of
the Patron.

P A P E R

Anonymous Mich. 9 Will. III. B. R.

A Parson
Parson shall not pay Colla, unless he be non-
then he shall pay Colla, as he is obliged, per Holt C. J.
Quare impedit, for afterwards in another Term, 2 months
that a Parson might be obliged for non-payment of
the a Parson, and the question was argued per Holt C.
a Parson, he has no interest for that purpose, and never knew it
done, more also, if a Parson gives notice of trial, and does
not produce, he shall be dispensed.

(1)
Parson shall
pay Colla of
Non-
See 2 Mod. 11.
1 Mod. 11.
1 Mod. 11.

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96. 97. 98. 99.
97. 98. 99. 100.

Curate is re-
moveable at
the Will of
the Parson.

Authority of
Commons
Curate
1000. 2. 17.
Lam.
Post. 114.

Poor Priests.
soners, Vid.
Post. 521.
1 Lev. 142.
6 Mo. 22, 301.

Parson, Vicar and Curate.

Birch *versus* Wood. Hill. 10 Will. III. B. R.

WOOD, pretending to be Curate of a Chapel of Ease in the Parish of Birch, sued the Vicar of the Parish in the Spiritual Court, for the Quare tamen Pension claimed by prescription; and a Prohibition was granted nisi causa, for that the Curate was removeable at the Will of the Parson, and so cannot prescribe; but his Remedy must be by quantum in consuetudine non est nisi in consuetudine. Vide Faresell. 63. That Parish Bounds are not to be proved by the Parson.

PAUPER.

Anonymus. Mich. 9 Will. III. B. R.

(1)
Pauper shall
pay Costs of
Nonsuit.
See 1 Sid. 261.
6 Mod. 83.
Faresell. 114.

A Pauper shall not pay Costs, unless he be nonsuit; but then he shall pay Costs, or be whipped, per Holt C. J. Quare tamen, for afterwards in another Term, I moved that a Pauper might be whipped for Non-payment of Costs upon a Nonsuit, and the Motion was denied per Holt C. J. saying, he had no Officer for that purpose, and never knew it done. Note also, If a Pauper gives Notice of Trial, and does not proceed, he shall be dispaupered.

Ano-

Anonymus. Mich. II. Will. III. B. R.

MR. Northey moved to dispauper a Parson, who was Plaintiff in an Action, because he had a Living of 40 l. per Annum. Turton and Gould Justices contra, because he swore he was in Debt more than it was worth: Holt C. J. differed from them; for his being indebted, or his Estate being mortgaged, is no Reason; 'tis enough, that he has a considerable Estate in Possession.

(1)
Dispauper-
ing.

Payment and Satisfaction, &c.

Vide ante

442.
2 Lev. 203.
212.
6 Mod. 36.
Post 519.

Mason *versus* Williams. In Canc.

PENDING a Bill in Equity against an Executor, or after a Decree quod computet, an Executor may pay any other Debt of a higher Nature, or as high a Nature; but this must be intended where he has legal Assets; for if he has only equitable Assets, the Court will not indemnify him, and suffer him to prejudice and disappoint the first Suitor; and where there is a final Decree against an Executor, and he pays a Bond, it is a Dispayment; for a Decree is in the Nature of a Judgment. Per Cowper Lord Chancellor.

(1)
Executor
may pay
Debts of a
higher Na-
ture after a
Decree quod
computet, not
after final.
See Cro. El.
793.
2 And. 157.
1 Rol. Abr.
54, 84.

925, 927. 1 Sid. 54. Vidg. 89. 5 Col. 28. 2 Chan. Cif.

Carter *versus* Sheppard, Pasch. 10 Will. III. B. R.

UPON a Point refer'd at Nisi Prius, the Case was, H. having a Note of 100 l. upon a Goldsmith, goes to receive it: While he is in the Shop, the Daly brought Money in to pay to the Goldsmith, who thereupon orders H. to receive the Money of Daly; accordingly H. receives 50 l. part of his hundred, pulls a Bag out of his Pocket, puts the Money into the Bag, lays it down by him, and proceeds to tell the rest; in the mean Time

(2)
A. receives
Money of B.
by the Hands
of C. 'tis A's
Money, and
he must abide
by the Loss.
See 6 Mod.
36.
5 Mod. 398.
a 2 Salk 442.

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Vide ante
442, &c. ib.
3 Mod. 86.
3 Lev. 299.
2 Show. 296,
297.
Molloy Li. 2.
c. 10.

a Stranger comes in, catches the Bag of 50 l. from him, and runs away; H. brings Trover against the Goldsmith for his Note, pretending the Property of the 50 l. remained in the Goldsmith, tho' put into the Plaintiff's Bag; for he had still a Right to count it over, and so it was not absolutely paid to the Plaintiff. Cur' contra. H. had appropriated the Money, by putting it into his Bag, and might bring Trover for the Bag and Money, as well as if he had put both Bag and Money into his Pocket.

Marle *versus* Make. Trin. 13 Will. III. B. R.

(3)
Payment be-
fore Breach
or after.
Vide Lutw.
472, 473.
5 Co. 117.

PAYMENT to a Bond with Condition indorsed, is a good Plea before Breach, but not afterwards, no more than to an Action of Debt upon a single Bill; for the Benefit of the Condition is lost when the Breach is made. Per Holt C. J.

Cranmer's Case in Canc'.

(4)
Legacy to a
Creditor,
greater or less
than the
Debt, how to
be taken.
Vide Cuth-
bert cont.
Peacock.
Ante 135.
Ante 415,
436.
2 Chan. Cal.
25.

MRS. Fisher was indebted in 50 l. to Cranmer, and left him a Legacy of 500 l. and made him Executor, and after the making of her Will, borrowed 150 l. more of him, and died: The Master of the Rolls decreed, that this Legacy should be a Satisfaction of both the Debts, that contracted after the Will, as well as that contracted before; but Harcourt, Lord Chancellor, reversed the Decree, because a Court of Equity ought not to hinder a Man from disposing of his own as he pleases; and when he says he gives a Legacy, we cannot contradict him, and say he pays a Debt; and as to the Debt contracted afterwards, he said there was no Pre- tence to make this to be a Payment of that: If a Legacy be less than the Debt, it was never held to go in Satisfaction; so if the Thing given was of a different Nature, as Land, it should not go in Satisfaction of Money; so if the Legacy be upon Condition, for by the Breach he may be a Loser, whereas the Will intended it for his Benefit. Note, In all these Cases the Intention of the Party ought to be the Rule.

Payment to the Sheriff on a Fi. Fa. is good, not so to the Gaoler. 2 Lev. 263.

Where Payment to the Plaintiff by the Bail is a Discharge. Vide ib. 221.

Note, Payment was formerly no Plea to a Sci. Fa. on a Judg- ment in Debt, but now it is by the Stat. 4 & 5 Ann. cap. 4.

3 Lev. 19, 20.

Peers

Peers of the Realm.

Rex & Regina *versus* Knollys. Trin. 6 W. & M. B. R.

Vide Parliament Cases, pag. 1. to 11. Farel. 15, 38. 1 Chan. Cal. 321. 2 Chan. Cal. 163, 224.

INDICTMENT was found at Hicks's-Hall, against Charles Knollys, for the Murder of Captain Lawson, which was removed into B. R. The Defendant pleaded in Abatement, that William Knollys, Viscount Wallingford, by Letters Patent under the Great Seal of England, which he produced in Court, bearing Date August 18. 2 Car. 1. was created Earl of Banbury, to him and the Heirs male of his Body: That William had Issue, Nicholas, who succeeded him in the said Title, and that the said Honour descended to him the Defendant from the said Nicholas, as Son and Heir. Et hoc paratus est verificare. It was replied, That 14 Decemb. 4 W. & M. the said Defendant petitioned the Lords then assembled in Parliament, to be tried by his Peers, and the Lords disallowed his Peerage, and dismissed the Petition.

(1)
Ante 451.

The Defendant demurred, and the Attorney-General joined in Demurrer.

The first Point considered per Holt C. J. was, What an Earl-dom was, and wherein it consisted.

Before the Time of Ed. 3. there were but two Titles of Nobility, viz. Earls and Barons.

Barons were originally created by Tenure, afterwards by Writ, and last of all by Patent, scil. about 11 R. 2.

As to Earls, 1st, They were always created by Letters Patent. Vide Seld. 536.

Baron.

2dly, An Earldom consisted in Office for the Defence of the Kingdom. Vide Bract. Lib. 1. c. 8. Comites had their Name, not from Counties, but à comitando Regem, 9 Co. 49. It may be entailed as any other Office may, within Westm. 2.

Earl, his Creation and Office. Note, in the Saxon Times the Earls of Counties being officary, were elected by the Freeholders in their Folk-motes, and were removable for male Administration. Vide LL. Edw. c. 35. LL. Badgari. c. 5. LL. Canuti, c. 17.

3dly, Earldoms consist of Rent and Possessions, &c. which were anciently great. Vide Mag. Chart. the Relief of his Heir is 100 l. This being premised, he went on to consider the Objections:

1st, That it is not alledged by the Defendant, that he is unus parium Regni Angliæ, but only unus parium Regni; nor is Banbury alledged to be in England, and an Irish Peer may be made under the Great Seal of England.

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To

and Saxon Chron. sub Anno 1055.

King may
create an Irish
Peer under
the Great Seal
of England,
by express
Words.

Place whence
Title is ta-
ken, not ma-
terial.

House of
Lords cannot
deprive of
Peerage.
Parliament
Cap. 2, 3, 4.

Judicial
Power of Par-
liament is in
the Peers but
'tis virtually
the Judg-
ment of the
King.
All Jurisdi-
ction from
the Crown.

To this be answered, That the Great Seal of England is appropriated to England, and what is done under it has Relation to England, and to no other Place; and tho' the King may create an Irish Peer under his Great Seal of England; yet that must be by express Words, being by special Act of Privilege. An Act of Parliament does not extend to Ireland, unless particularly named, and 'tis a foreign Intendment to suppose him an Irish Peer, and therefore is to be rejected.

The Place from whence an Earl takes his Title, is not material; 'tis not necessary there should be such a Place in England, or indeed any where. Albemarle is not in England, and there is really no such Place as Rivers, tho' we have an Earl of that Name.

2nd, 'Tis objected, That the Defendant ought to have concluded his Plea, with *procurat per Recordum*, and have produced a Writ to rectify the Descents.

As to the Writ to rectify the Descents, that is not of Necessity, but only merely by Expedition; and if his Peerage had been created by Writ, then it would have been triable by the Record, and was a fatal Exception: But Letters Patent may be pleaded and shown to the Court, and the adverse Party cannot deny them; and as this Case is, here being Descents, if the Defendant had concluded as the King's Counsel say he should, it would have been an impracticable Conclusion, and consequently void. And in the Precedents cited of the other Side, there were no Letters Patent pleaded; nor could there in this Case be any such Issue as Earl, or not Earl; for the Letters Patent under the Great Seal could not be denied or questioned, but by pleading *Non concessit*.

3rd, That the Defendant is concluded of his Peerage by the Order of the House of Lords.

To this Eyre J. said, The Defendant had a Title to his honour by legal Conveyance, and that it was under the Protection of the Common Law, and could not be taken from him but by legal Means. That the House of Lords could no more deprive one of a Peerage, than they could confer a Peerage: That the Defendant's Right stood upon the Letters Patent and his Legitimacy; that the Letters Patent could not be cancelled without a *Scire facias*; and that the Defendant could not now be proved a Bastard or illegitimate.

Holt C. J. gave these Reasons: 1st, That this Order was not a Judgment of Parliament; the Parliament consists of the King, the Lords Spiritual and Temporal, and the Commons: The judicial Power is in the Lords only; yet legally and virtually it is the Judgment of the King, if not of the Commons; and Writs of Error in Parliament are *coram nobis* in presenti Parlamento. Vide Fleta, c. 17. All Power of Jurisdiction is derived from the King; if that be an Author to be credited.

The

The House of Lords has a double Authority, as Parliament, and the Court of the House, between which we must distinguish by their Style. Journals are no Records of Parliament, and therefore we cannot take Notice of them, Hob 110. King and Hunsdown versus Arundel and Howard. Judgments ought to be given in their proper Style; and therefore, if this Court, which is coram Rege, enter Judgment per Justiciarios de B. R. 'tis void.

House of Peers has a double Authority.

The House of Lords has no Jurisdiction over an original Cause mixed with Matter of Fact; because 1st, that supream Court is the dernier Resort; besides that for the most Part, original Causes are mix'd with Matter of Fact, and it is below the Dignity of so supream a Judicature, to try a Matter of Fact; 'Tis for this Reason, Error in Fact in the Court of King's Bench, must of necessity be redress'd before the Judges of this Court. 2^{dy}, If the Parliament should take Cognizance of original Causes, the Subject would lose his Appeal, so much indulg'd by the Common Law in all Cases. Causes come not thither, till they have tried all other Judicatures; For this Reason, within these four Years, Judgment was given against the Earl of Macclesfield in the Exchequer, he brought Error in the House of Lords, and the Question was, Whether by 31 Eliz. 3. the Exchequer-Chamber should not interpolate? And the Writ was abated, and it was held, that the Exchequer-Chamber should interpolate. This Dignity is a Title by Common Law, and if a Patente be disturbed by his Dignity, the regular Course is, to petition the King, who indorses it, and sends it into the Chancery. Vide Staundf. Prerog. 72. 22 E. 3. 4. Long 5^o E. 4. 117. The King could give Precedency by the Common Law, but is bound by 31 H 8. c. 10.

But no original Jurisdiction.

When Error lies not from the Court of Exchequer to the House of Lords.

Where a Patente is disturb'd of Dignity, how to proceed.

If a Peer commits Treason, he must be tried by his Peers, and they may order a Trial, but the King may chuse whether he will make a high Steward.

3^{dy}, No Plea was depending in the House of Lords, for the Defendant did not petition to enjoy; but supposed himself in Possession.

4^{thly}, There was no Judgment. A Court can give no Judgment in a Thing not depending, or that does not come in a judicial Way before that Court: Here the Title of the Earldom was not before them. If Trespass be brought for a Trespass done in the Ground belonging to a House, and it appears at the Trial, the Plaintiff has no Title to the House, yet the Court cannot give Judgment to turn him out.

5^{thly}, A Judgment ought to be compleat and formal: If a Quo Warranto be brought for usurping Royal Franchises, and the Court give their Opinion that the Defendant has no Title; yet unless they go on, Et quod ab inde excludatur, &c. it is nothing. So in the Case of Lovell, 2 Cro. 284. In Debt on an Obligation, the Defendant pleaded a Bar by Verdict and Judgment in a former Action,

Judgment must be compleat and formal.

Action, wherein the Entry was, that the Defendant should recover Costs; Et quod eat inde fine die: Here, because there was no Judgment, quod querens nil capiat per breve, it was adjudged naught; for Dismission is no Judgment in a Court of Law.

Dismission is
no Judgment.

Objection. It is said that this Judgment was given secundum legem Parliamenti.

Lex Parli-
amenti.
Ant. 503, 504.

Ans. Lex Parliamenti must be looked on as the Law of the Kingdom; but admitting it were a particular Law, yet if a Question arises determinable in the King's Bench, the King's Bench must determine it. Vide Dy. 60.

Inheritances
not original-
ly determin-
able in Par-
liament.

14 Car. 2. C. B. Binion versus Eveling. Filing an Original against a Parliament-Man was adjudged to be no Breach of Privilege. If a Man be committed by Parliament, and the Parliament is prorogued, this Court will grant a Habeas Corpus. But no Precedent hath been shewn to warrant the determining Inheritances originally per legem Parliamenti; if it be so determinable, it must be by Act of Parliament, but there is no such; or by Custom, but there is no such Custom; but if Inheritances were determinable in Parliament, without their having Jurisdiction, they would have uncontrollable Power, and res est misera, ubi jus est vagum. And he concluded that Judgment should be given for the Defendant, and accordingly the Indictment was abated: So the Defendant was not tried for the Murder at all.

Lord Banbury's Case. Pasch. 5 Ann. B. R.

(2)
H arrested
by the Name
of a Common-
er, the Court
won't try
whether a
Peer or not
upon a Mo-
tion.
Vide ante
451, 509.
Parl. Cases,
2, 3, &c.
Farell. 15, 38.

LORD Banbury was taken on a Latitat sued against him by the Name of Charles Knollys Esq; and it was now moved for a Superseas, offering to shew the Letters Patent of Creation, and an Affidavit, that he was the Person; and it was agreed, That if the Latitat had been sued against him by the Name of Lord, it should have been superseded; for the Law supposes a Peer able to answer the Demand of any personal Action; and the Body is only liable for Want of being responsible in Substance: And if he had sat in Parliament by Virtue of any Writ of Summons, and had been sued as Charles Knollys; but not having sat in Parliament, they could not take Notice of his Peerage, and would not proceed to try it on a Motion.

Sir Thomas Meers contra Lord Stourton. In Canc.

(3)
Where a Peer
shall depose
on Oath or
Honour.

SIR Thomas Meers exhibited a Bill against the Lord Stourton, and it was ordered that the Lord Stourton should be examined upon Interrogatories touching his Title; and it was objected, That he being a Peer of the Realm, ought to answer upon his

honour only; and it was ruled by Harcourt Lord Keeper, that where a Peer is to answer to a Bill, his Answer put in upon his Honour is sufficient; but where a Peer is to answer Interrogatories, to make an Affidavit, or be examined as a Witness, he must be upon his Oath.

PERJURY.

3 Mod. 116, 134. 6 Mod. 176, 168. 5 Mod. 343, & 348. 1 Hawk. P. C. Cap. 69.

Dominus Rex *versus* Greepe. Mich. 9 Will. III. B. R. S. C. 5 Mod. 343.

An Information for Perjury set forth, That the Defendant, upon giving a Lease and Release in Evidence in a certain Cause, bearing Date the 15th and 16th of July 1681. executed at Albemarle-House, to which Mr. Stroud was a Witness, swore that Mr. Stroud was the Middle of July, 1611. at Newnham, innuendo Newnham in Devonshire, ubi rovera non fuit apud N. predict. A Verdict was for the King, but Judgment was arrested; and it was held,

1st, That Newnham was but an individuum vagum without the Innuendo, and might be as well Newnham in Middlesex as Newnham in Devonshire, or some far distant Place. And if Newnham was at the next Door, Stroud might be at Newnham, and yet be at Albemarle-House in Middlesex too in the Middle of July.

2^{dly}, That the Innuendo could not restrain the Individuum vagum to Newnham in Devonshire; for it is no Adverment, but in the Nature of a Prædict. It may serve for an Explanation to point out, where there is precedent Matter, but never for a new Charge: It may apply what is already expressed, but cannot add, or enlarge, or change the Sense of the precedent Words: So here, the word Newnham did not import Newnham in Devonshire; ergo, the Innuendo cannot enlarge the Importance of it, and make it so significant. *Vide* Sty. 333. 3 Cro. 428. Goldsb. 191. Hob. 3, 6, 45. 1 Ro. 82, 83, 84. 2 Bul. 81, 82. 1 Ven. 337. Hutt. 44. 4 Co. 20. Yelv. 21. 1 Cro. 321. A. 32.

Sep. 1681, 1682. 2 Show. 11, 12. 3, 166, 484. P. C. Cap. 69.

Innuendo.
Vid. Yel. 21.
Cro. El. 497.
Hob. 2, 3, 45, 461.
Hart. 65.
Hett. 174.
Alevn. 39, 91.
1 Vent. 337.
1 Sid. 52.
2 Show. 305, & 411.
3 Mod. 51, 54.
3 Lev. 69, 166.
Innuendo may explain or apply, but cannot add to, or change the Sense.

Perjury may
be in Evi-
dence to the
Credit of a
Witness.
6 Mod. 168.

Charge ought
to be equally
certain at
Common
Law, and on
the Statute.

Where H. is
convict on
the Statute,
Disability is
part of the
Judgment;
at Common
Law 'tis only

3dly, That a Man ought not to be drawn into a constructive Perjury; and that if the Matter of this Oath was certain, it is material to the Issue and sufficient to be Perjury; and Holt C. J. denied Golds. 191. and held, that if a Man gives Evidence to the Credit of a Witness, tho' this be not the Issue, yet 'tis Perjury. 4thly, as to the Objection, that this was an Information at Common Law, and not on the Statute, that makes no Difference as to the Certainty of the Charge; for 'tis no more infamous now than it was at Common Law; the Difference is only, That where H. is convict upon the Statute, 'tis part of the Judgment to be disabled; but at Common Law 'tis only a consequential Disability: Ergo, in the later Case, the King may pardon, and that restores him to his Testimony; otherwise in the former, for in that Case he must reverse the Judgment, or cannot be restored.

a Consequence. Vide ante 461. Post. 689, 691.

Vid. ante A-
batement, De-
murrers, Ju-
stification,
&c. & P. 496.

(1)
Upon an In-
formation in
Middlesex,
the Defen-
dant shall
have the
Term to
plead; in the
County, till
next Term.
Post 624, 650.

Pleas and Pleadings.
ANONYMUS. Mich. 1 W. & M. B. R.

If a Man be bound by Recognizance to appear the first Day of the Term, and is charged upon his Appearance with an Information, in Case the Information be laid in Middlesex, the Party has Time to plead during all that Term, so that it cannot come to Trial in the Term; but in case it be laid in any other County, the Party shall have Time to plead till the next Term; for he is as much concerned to defend himself in those Cases as in any Civil Action; and since the Law allows him Counsel, the Law allows him Time likewise to consult with them; for not to allow the Means of Defence, is to take away the Subject's Defence; otherwise it is of capital Offences: But Note, in these Cases there is no Counsel. And where the Party comes in by Capi Corpus, or upon an Outlawry, he shall plead presently, for then he has been guilty of a Contempt. Per Cur', contrary to the Case of the seven Bishops.

Time to Plead, Vide Post. Pl. 3, 4.

Woodward *versus* Cliff. Pasch. 2 W. & M. B. R. Vide 2 Lev. 12, 75.

IN Covenant, the Plaintiff declared that he was seized in Fee, and that by Indenture made between the Plaintiff and Elizabeth his Wife ex una parte, and the Defendant of the other Part, testatum existit that the Plaintiff and his Wife demised. ⁽²⁾ Testatum existit is only Recital. Post 589, 699. 2 Lev. 74, 75. It was objected, That it being shewn that the Husband was sole seized, the Husband and Wife could not demise; sed non allocatur, for it is not affirmed, but only that by the Indenture 'tis witnessed, for the Testatum is a Rehearsal of that.

Hall *versus* Englestone. Mich. 8 Will. III. B. R.

UPON a Habeas Corpus returnable in Michaelmas Term, if the Declaration be delivered before Crastinum Antiharum, the Defendant must plead to try; but upon a Capi Corpus he is only to plead to enter. So in Easter Term, if the Declaration be delivered before Mens. Pasche, the Defendant on a Habeas Corpus must plead to try; upon a Capi Corpus to enter only. ⁽³⁾ Difference between Time to plead on a Habeas Corpus and a Capias. Ante pl. 1. Post pl. 15.

Anonymus. Mich. 8 Will. III. B. R.

IF a Declaration be delivered against one in Custody, he shall have the whole Term to plead in Abatement. ⁽⁴⁾

Anonymus. Mich. 8 Will. III. B. R.

BEFORE Joinder in Demurrer, the Defendant may waive his special Plea, and plead the general Issue, per Cur'. But if there be a Rule to plead, so as to stand by it, and the Defendant pleads a special Plea, as he may, and the Plaintiff demurs, the Plaintiff shall not then waive and plead the general Issue. ⁽⁵⁾ Waiver of special Pleadings.

Pierce *versus* Blake. Hill. 8 Will. III. B. R.

THE Defendant pleaded a false Plea in Abatement, viz. That the Plaintiff was dead; the Court was moved, that the Attorney might be compelled to swear it: Et per Holt C. J. We cannot compel him in any Case to swear his Plea, but where it is a foreign Plea; but the Attorney, if he puts in a false Plea to delay Justice, breaks his Oath, and may be fined for putting a

Deceit upon the Court: he remembered a Case where Judgment was given against a Defendant above forty Years of Age, upon which Judgment he brought a Writ of Error, and assigned Infancy, and appearing by Attorney for Error, and the Court fined the Attorney: In the principal Case the Court ordered the Attorney to plead immediately, for as he would stand by it; by the Court, if he did not, would enquire into the Truth of the Plea, and if they found a Deceit and a Trick, they would fine him. **Note,** The Court will not order a Man to plead peremptorily till the Rules be out.

Brown versus Cornish. Pasch. 9 Will. III. B. R.

(7)
Onerari non
debet proper
only where
there never
was a Charge.

INDEBITATUS ASSUMPSIT and Quantum meruit for 20l. The Defendant pleaded, onerari non debet, because he paid the Money at the Time, &c. Et hoc paratus est verificare; The Plaintiff demurred: Et per Holt C. J. 1st, This Plea does not amount to the general Issue, because it admits the Cause of Action. 2dly, Onerari non debet is no Plea here, because he allows the Promise to be a good Promise, but avoids it by Matter of Discharge ex post facto; in this Case he should have pleaded actionem non. But where the Matter of the Plea shews there never was a good Cause of Action, onerari non debet may be proper; thus in Debt on a Bond, Defendant may plead onerari non debet quia riens per Discent. 3dly, The Plea was misconcluded, for he ought to conclude to the Country.

(8) *Ashton versus Sherman.* Mich. 9 Will. III. B. R. Vide this Case, title Executors. Pl. 10. pag. 298.

Anonymous. Mich. 9 Will. III. B. R.

(9)
Plea after
Judgment in
Ejectment.

IF Judgment in Ejectment be signed in a Country Cause for Tenant of a Plea, but no Possession delivered, a Judge in his Chamber at any Time before the Assizes, may compel the Plaintiff to accept a Plea; but if Possession be delivered, he is without Remedy, per Holt C. J.

Gray

Gray versus Hart. Hill. 9 Will. III. B. R.

IN Assault and Battery, the Defendant pleaded a Writ to the Sheriff returnable in C. B. and a Warrant to him to arrest the Plaintiff, &c. and did not shew from what Court the Writ issued, and it was held naught; for it might be a Writ out of the King's Bench or the County Palatine, and they would not intend it a Writ out of Chancery: So if H. plead a Judgment, he must shew in what Court; for to put the adverse Party to search in every Court, would be infinite.

(10)
In justifying under a Writ, it is not enough to shew where returnable, but must shew whence it issued.

Anonymus. Mich. 10 Will. III. B. R.

THE Court resentenced the Number of frivolous Sham Pleas which came before them, saying, It was against the Duty of Counsel, and against the Statute W. 1. c. 29. and that the old Rule ought to be revived, viz. That Counsel should set their hands to the Books delivered to the Judges, which was anciently so ordered, that the Court might not be troubled with frivolous Pleas.

(11)
Sham Pleas.

Pasmore versus Serj. Goodwin. Trin. 11 Will. III. B. R.

SERJEANT Darnel moved for an Imparllance till the next Term; because the Defendant was an Officer of the Court, and the Bill was not filed against him, so as to give him eight Days within Term to plead; But the Court held, That the Day of the Bill filed is one Day, so that the Plaintiff may give Rules that Day; also they agreed, that Sundays and Holydays are to be reckoned in: And the Clerks said it was sufficient that he had four Days in Term, quod Curia concessit; Mr. Clark said, that anciently there were two Rules given, both four Day Rules; the first was, ad respondendum, the second Ad respondendum peremptorie, which two were now turned into one eight Days Rule.

(12)
Upon Bills filed against Officers it is sufficient, if there be four Days within Term to plead. Vide ante pl. 1, &c. ibi.

Anonymus. Trin. 11 Will. III. B. R.

THE Question was, Whether there ought to be new Rules to plead upon an Amendment? Pew, Clerk of the Papers, said, that if the Plea was of another Term, there ought to be new Rules; otherwise if it be a Plea of the same Term, because there is a Rule to warrant the Judgment. Holt C. J. Anciently they did not plead de novo after an Amendment; therefore gi-

(13)
No new Rules to plead after an Amendment, unless an Imparllance be given.

bing Rules to plead again, cannot be the ancient Course; because the Practice of Pleading de novo is but of late introduced, but with great Reason: When the Plaintiff amends and gives an Imparance, there should be new Rules; otherwise not.

See 1 Salk. 47. Information amended after Plea pleaded. Quar.

Wood *versus* Cleveland. Pasch. 12 Will. III. B. R.

(14.)
Judgment set
aside tho'
strictly regu-
lar, in order
to try the
Merits.
Vide 6 Mod.
191, 241.
1 Salk. 399.
401.
1 Mod. 1.

IN a common Action of Trespass, the Plaintiff signed his Judgment for Want of a Plea; the Defendant after Term, and before the Assizes, offered him a special Plea, or to plead the General Issue, provided the Plaintiff would consent to enter into a Rule, that he should at the Trial be allowed to give special Matter in Evidence; the Plaintiff refused, and executed a Writ of Enquiry: And now Sir Bartholomew Shower moved, that upon paying Costs the Judgment might be set aside, and the Plaintiff obliged to accept their Plea and go to Trial, the Plea being true and containing special Matter of Title. The Motion was granted; for, per Holt C. J. Where the Defendant's Plea was a fact Plea, and no Delay affected, we will interpose; otherwise where a Plea contains special Matter that is questionable and was designed to draw the Plaintiff to demur,

Anonymous. Trin. 12 Will. III. B. R.

(15.)
How the De-
fendant shall
plead after a
voluntary Ap-
pearance.

THERE was a Question, If a Man appears voluntarily before menssem Paschæ in Easter-Term, whether he be obliged to plead to enter: Sir Samuel Astrey and Mr. Clark were of Opinion he was not. But per Holt C. J. There is no Difference between a voluntary Appearance and an Appearance upon a Capi Corpus; for a voluntary Appearance is not good, unless a Writ hath been taken out: And there is no Reason for it; for if the Plaintiff be content with a voluntary Appearance in Case of the Defendant, there is no Reason why the Plaintiff should be in a worse Condition than if he had arrested him: Let the Rule be, if a Writ be taken out, and the Defendant agrees to appear, he shall appear and plead according to the Return of the Writ, and if the Return be before menssem Paschæ, he shall plead to enter; but if no Writ were taken out, he shall not be obliged to appear; but if a Writ were taken out returnable after menssem Paschæ, he shall have an Imparance till next Term.

Vide ante pl.
1. & 3.

Peirce *versus* Paxton. Trin. 13 Will. III. B. R.

Vid. ante 508.
2 Lev. 212.

IF Debt on a Bond, the Defendant Pleas darrein Continuance, pleaded Payment of Part, and an Acquittance in Abatement: Upon Demurrer Holt C. J. held it a Plea in Bar and not in Abatement. Vide 3 Cro. 342. Al. 62. 65. 3 Cro. 157. That is a Bar before the Action brought, is as much a Bar after, for Time makes no Difference in the Nature of the Thing. Vide 7 E. 4. 15. Sty. 212. is a dark Case. Entry into part differs; for that is without the Consent of the Plaintiff. But the Plea is not good, because the Acquittance is a Deed, and ought to be pleaded with a Profert. Judgment to answer over.

(16)
Payment of Part, and Acquittance pleaded Puis darrein Continuance is in Bar.

Vide 3 Lev. 230.
Lutw. 1177, 1142.
5 Mod. 127.

Anonymus. Trin. 13 Will. III. B. R.

IF an Act of Parliament makes Writing necessary to a Common Law Matter, where it was not necessary by the Common Law, you need not plead the Thing to be in writing, but give it in Evidence; but where a Thing is originally made by Act of Parliament, and required to be in writing, you must plead it with all the Circumstances required by the Act; as upon the Statute of H. 8. of Wills, you must plead a Will to be in writing; but a collateral Promise, which is required to be in writing by the Statute of Frauds, you need not plead to be in writing, tho' you must prove it so in Evidence. Per Holt C. J.

(17)
Where a Statute creates a new Thing in writing, it must be so pleaded; but where it only adds it to a Common Law Matter, it needs not. Lutw. 1423.
1 Sid. 143.
1 Lev. 81.

Anonymus. Trin. 13 Will. III. B. R.

IF a Man pleads over, he shall never take Advantage of any Slip committed in the Pleading of the other Side, which he could not take Advantage of upon a general Demurrer. Per Holt C. J. See 6 Mod. 136.

(18)
Nothing can be taken Advantage of on a Plea over, which could not on a general Demurrer.

Anonymus. Trin. 1 Ann. B. R.

IF a Man has forfeited his Bail-Bond, and so is in misericordia, and the Court in favour of him stay Proceedings thereupon, he cannot afterwards plead in Abatement to the original Action, but must plead in Chief.

(19)
After Bail-Bond forfeited, Defendant cannot plead in Abatement in the original Action.

Ano-

Anonymus. Mich. 2 Ann. B. R.

(20)
Amendment.

By the Course of the Court, if the Plaintiff moves to amend his Declaration the same Term the Defendant's Plea comes in, the Plaintiff need not give new Rules to plead; but the Defendant must plead in convenient Time.

1 Salk. 47.

Anonymus. Mich. 2 Ann. B. R.

(21)
Reason of Amendment while in Paper.

SINCE Pleading in Paper is now introduced instead of the old Way of Pleading ore tenus at the Bar; it is but reasonable after a Plea to Issue, or Demurrer joined, that upon Payment of Costs the Parties should have Liberty to amend their Plea, or to waive their Plea or Demurrer while all the Proceedings are in Paper.

S. C. 1 Salk.
208.
6 Mo. 157, 197

Fanshaw *versus* Morrison. Pasch. 4 Ann. B. R.

(22)
Scire facias upon a Recognizance of Bail in Error.
See 6 Mo. 159.

SCIRE FACIAS upon a Recognizance entered into before a Judge of the Common Pleas, upon a Writ of Error of a Judgment given in that Court in Debt, conditioned that if the Plaintiff should be nonsuit, the Writ of Error discontinued, or Judgment affirmed, that then he should pay, &c. The Defendant prayed Oyer, and pleaded that the Plaintiff in Error did prosecute the Writ of Error, and assigned Errors, Et quod placitum super prædict. breve de errore adhuc pendet indeterminat', &c. The Plaintiff replied, that the Judgment was affirmed, absque hoc quod placitum pendet indeterminat', &c. The Defendant demurred, and Judgment was given for the Plaintiff in C. B. and now upon a Writ of Error, the Court held, That where a Man pleads a Performance, he ought to plead it in the Words of the Condition of the Bond, 3 Lev. 293. 2 Ven. 221. Dy. 243. but otherwise where he pleads an Excuse; and that the Defendant's Plea is an Excuse in this Case, and therefore it was not necessary to plead that the Plaintiff in the Writ of Error was not nonsuit, nor the Writ discontinued, nor the Judgment affirmed; but that Errors were assigned, & placit' inde pendet indeterminat'.

Performance must be pleaded in the Words of the Condition; otherwise of Excuse.
Lutw. 419.
420, 471, &c.
3 Lev. 245.
1 Lev. 145.
Negative Pleas need not conclude prout patet per record'.
3 Lev. 152.
311.
5 Mod. 8.
1 Lev. 212.
1 Lutw. 111.
207, 264.

2dly, The Court held this Plea was in the Negative, and therefore there was no Occasion for the Defendant to conclude with a prout patet per recordum: But the Plaintiff ought upon this Plea to have replied, that the Record was certified in B. R. Such a Term, Et quod superinde talit' process' fuit quod Judicium

cum affirmat' fuit prout patet per recordum; to which, if it was not so, the Defendant might rejoin Nil t'el record.

2dly, The Court held the Replication nought; 1st, Because it makes that Matter of Inducement which should have been the Point in Issue; and, 2dly, Because the Traverse puts a Matter of Record in Issue to be tried by the Country: And upon this the Court were going to reverse the Judgment, but an Exception was started to the Writ of Error, for which it was quashed.

Traverse, that puts Matter of Record in Issue to the Country, is ill.

Vid. 1 Saund. 20.

Lutw. 633, 1138, & Hustler versus Raines Ib. 1401.

Domina Regina *versus* Rawlins. Mich. 3 Ann. B. R. (23)
Vide this Case, title Imparlance, Pl. 3. Ante 367.
When the Defendant ought to plead to an Information.

Turner *versus* Beale. Pasch. 5 Ann. B. R.

IN Assumpsit, the Defendant cognovit actionem, but in Bar of Execution as to his Person, Apparel, Bedding, Tools, &c. pleaded 2 & 3 Ann. c. 16. and shewed that he was actually a Prisoner in the Marshalsea, and that being there, t'el jour & ann, he was debito modo discharged by the Justices at such a Sessions, juxta formam Statuti: To this it was demurred, and insisted, that it did not appear that he petitioned; and the Justices ought not to assume a Jurisdiction and discharge Prisoners without seeking, or whether they will or not; and the Defendant ought to shew his Qualifications, and that he is within the Benefit of the Act, and it ought not to be put upon the Plaintiff, who is a Stranger, to shew that he was not qualified; *Dr. Eyre contra arg'd*, That all was added by juxta formam Statuti. Vide 1 Cro. 314. 2 Cro. 609. Holt C. J. The Sessions cannot intermeddle but upon Application: You must shew your Discharge, and that it was regular and not deficient: The Plaintiff is a Stranger, and tis not to come on his Side, that the Discharge was deficient, but you must shew the whole Matter and give him an Opportunity to traverse it. Judgment for the Plaintiff.

(24)
Plea upon the Statute, for Discharge of poor Prisoners, ought to shew all Qualifications and Circumstances to bring the Defendant within the Act.

Vid. ante 506.

Woodrington *versus* Deverill. Hill. 5 Ann. B. R.

AFTERWARDS, Hill. 5 Ann. inter Woodrington and Deverill. In Debt on a Bond, the same Case happened as before, and then the Case last mentioned was remembered, and without pretending to make good the Plea in Form, the Statute of Amendment of the Law, 4 & 5 Ann. c. 16. was insisted on, viz. That Judgment shall be given as the Right appears, &c.

(25)

Pen.

Pengelly for the Plaintiff said, that here appeared no sufficient Discharge, but a good Cause of Action for the Plaintiff. Powell J. said, that it did not help Substance; that if this sort of Pleading be made good, the Court can never know when particular Jurisdictions are with Authority, and when not; Quod Holt C. J. concessit, saying, this Exposition was to take the Party's Issue from him.

Pledge and Bailment.

Vid. ante 441.
Dr. & St. 130.
Bro. Attachment, 20.
4 Co. 32, 58,
&c. infra.

Anonymus. Pasch. 5 W. & M. B. R.

(1)
Pawn-broker.

If a Pawn-broker refuses, upon Tender of the Money, to redeliver the Goods pledged, he may be indicted, for being secretly pawned, it may be impossible to prove a Delivery in Trover, for Want of Witnesses. Per Holt C. J. and Eyre J.

(2)
Pawn, quid.
Lit. Rep. 332.
Keilw. 82.

Vadium, a Pawn or Pledge. In this Case the Pawnee hath a Property, for the Thing is a Security to the Pawnee that he shall be repaid his Debt, and to compel the Pawner to pay it.

And how to
be demeaned.

Now, if the Pawn be somewhat that will be the worse for wearing, as Cloaths, &c. the Pawnee cannot use it.

4 Co. 32, 38.
Co. Lit. 89.
Yelv. 178.
Owen. 124.
2 Cro. 224.

But if it be somewhat that will not be the worse for wearing, &c. as Jewels, &c. the Pawnee may use them, but then it must be at Peril; for if the Pawnee is robbed in wearing them, he is answerable; and the Reason is, because the Pawn is so far in the Nature of a Depositum, that it cannot be used, but at the Peril of the Pawnee; and the using occasioned the Loss. Vide Owen 423. But if the Pawn is laid up, and the Pawnee is robbed, the Pawnee is not answerable.

Also, if the Pawn be of such a Nature, that the Keeping is of Charge to the Pawnee, as if it be a Cow or a Horse, the Pawnee may milk the Cow or ride the Horse; and this is in Recompence of the Keeping.

If a Creditor takes a Pawn, he is bound to restore it upon Payment of the Debt; but if his Care in keeping it be exact, and the Pawn is lost, he shall be excused, for there is no Default in him.

Co. 38.
Yelv. 178.
Co. Lit. 89.

And in Case the Pawn be lost, the Pawnee hath still his Remedy for the Money against the Pawner; for the Law requires nothing extraordinary of the Pawnee; but only that he shall use an ordinary Care for the restoring the Goods.

If a Pawn therefore be lost before Tender, the Pawnee is not liable, unless there be Default in him; but if after Tender the Pawnee keeps the Goods, and they are stolen, the Pawnee must answer; for now his Property is determined, and he is a wrongful Detainer; and he that keeps Goods by Wrong, must answer for them at Peril, in all Events; for his Detainer is the Reason of the Loss. Delivered per Holt C. J. In the Case of Coggs and Bernard, Trin. 2 Anna B. R.

Lit. Rep. 332.
Owen 124.

Poor, Poor's Rates, Vagrants, &c.

[Vide Title, Orders, Sessions.]

Inter the Inhabitants of the Parish of Talborn and Boston. Mich. 7 Will. III. B. R.

It was held, That if a Man is taxed, and after Taxation stays in the Parish forty Days without giving Notice, tis no Settlement within the new Statute, unless he pays the Tax; for it must be taxing and paying, and not taxing only that makes a Settlement, and is equivalent to a Notice in Writing.

(4)
Taxation only without Payment, makes no Settlement.
Vid. ante 478.
pl. 21.
Post 534, 536.
1 Show. 12.

Inter the Parishes of Ryssip and Harrow. Hill.

8 Will. III. B. R.

(2)
Living in a
Parish, where
H. has Land,
gains a Set-
tlement.
Vide ante &
post 534, 536.

PER Holt C. J. Having Land in a Parish will not make a Settlement, but living in a Parish where one has Land will gain a Settlement without Notice; for the Act of Parliament never meant to banish Men from the Enjoyment of their own Lands, and the Law takes Notice of Freeholders, as those that chuse Members of Parliament and are Jurors. Also boarding as a Scholar gains no Settlement, no more than being nursed in a Parish.

The Case of the Parish of Shoreditch. Mich. 10 Will. III. B. R.

(3)
Justices may
quash the
whole Rate
where the
Rate is un-
equal, and
make, or or-
der to be
made, a new
one.
Vide ante
pag. 484. &
post pl. 5. &
17.

AN Order of Sessions was made for quashing a Poor's Rate for the Parish of Shoreditch. Exception was taken, that by the Statute of 43 Eliz. the Justices could not quash the whole Rate; but were to relieve the Parties grieved. Sed per Cur'. If a Rate be burthensome to a whole Set of Men, as in this Case it was to Landholders, the best Way is to quash the whole Rate; and the Chief Justice held, That if the Justices quash this, they may make a new one themselves, but they are not bound to do it, but may order the ancient Inhabitants to do it.

Inter the Inhabitants of the Parish of Harrow and Ryssip. Mich. 10 Will. III. B. R.

(4)
Confirmation
upon Appeal
is final against
all Parishes,
otherwise of
Reversal.
Vide ante
pag. 486, pl.
45, &c. ib. &
post pag. 537.

A Comes into Harrow, and being likely to become charge-able, was removed to Ryssip; Ryssip appealed; and upon the Appeal, A. was adjudged to be settled at Ryssip; afterwards Ryssip discovered that Hendon was the Place of his last legal Settlement, and sent him thither; and the Question was, Whether after the Adjudication upon the Appeal, Ryssip was not estopped against all the World, to say, that Ryssip was not the Place of his last legal Settlement? Et per Holt C. J. Ryssip is estopped to say otherwise; for if Ryssip had not been the very Place of his last legal Settlement, the Justices must have sent him back to Harrow, who were first possessed of him, for that Reason, because they were possessed of him, and he did not belong to Ryssip. And now this is in Effect the same Question again, viz. Whether he belongs to Ryssip? which Question has been already determined by the Justices on the Appeal, who have adjudged that he was

was last settled at Ryssip: Now this Point being determined, the Appeal must be final and conclusive; otherwise there would be no End of Things; and the rather as to Ryssip, 1st, Because Ryssip was Party to the Suit wherein this Determination was made, and yet H. may be estopped where he is not Party to a Suit; per Holt C. J. who remembered the Case of Thornton and Pickering, where it was adjudged, That if H. be adjudged by two Justices to be the Father of a Bastard-child, he is estopped as to all mankind to say the contrary, and any Man may call him so at his Pleasure. The Case was, A Libel was exhibited in the Ecclesiastical Court, for saying he had a Bastard, and the Defendant suggested for a Prohibition this Adjudication by the two Justices; and the Suggestion being turned into a Declaration in an Attachment on the Prohibition, the Defendant pleaded to it, that the Words were spoken at large without any Relation to the Adjudication by the Justices. Plaintiff replied, and prayed Judgment if he should not be estopped by the Adjudication to say he had not a Bastard.

Afterwards, Hill. 10. this was moved again, and then Holt and Gould held the Adjudication was final as to Ryssip against all Persons and Places, because the Point of his Settlement as to Ryssip was tried in the Appeal; but as to Harrow (for he had been formerly remov'd by them to Hendon, and that Order reversed) they were at Liberty to send him to any other Place, and were not estopped; because the Justices on the Appeal did not adjudge him to be settled at Harrow, tho' they adjudged him now to be settled at Ryssip, so that the other Point was not tried. *Torton and Rokeby contra. Adjournatur.*

Anonymus. Hill. 10 Will. III. B. R.

A Mandamus was granted to the Justices of Peace on 43 Eliz. commanding them to compel the precedent Overseers of the Poor of the Parish of A. to come to an Account with the present Overseers, and this Writ was now quashed: 1st, For that the Account by 43 Eliz. is to be given to two Justices, and not to the succeeding Overseers. 2dly, Two of the Persons named in the Writ whom the Justices were to compel to come to account, do not appear to have been Overseers.

(5)
A Mandamus to compel precedent Overseers to come to an Account with the present, quash'd. Vide ante 484, & 524. 6 Mod. 77, 17, & 20.

97. & post pl.

Inter the Parishes of Beckenham and Camberwell.

Trin. 11 Will. III. B. R.

A Question was made upon 8 & 9 W. 3. c. 3. which enacts, That an unmarried Person hired for a Year, shall not be settled, unless he serves the whole Year, whether that extended on-

(6)
Unmarried Person hired for a Year.

Vide post pl.
11. & pl. 13.

ly to Cases that might happen after the Act, or to such also as had happened? Et per Cur'. To such only as may happen after the Act: It can have no Retrospect, but declares a Law for the future, notwithstanding the Words, declared and enacted. Adjudged upon a special Order.

Anonymus. Hill. 11 Will. III. B. R.

(7)
Vagrant to be
sent to the
Place of his
Birth, and
from thence
by Order to
the Place of
his Settlement.

IF H. being settled at A. becomes afterwards a Vagrant, some Justices have thought that to be a Determination of the Settlement; but I never could think so, for if H. be found a Vagrant within 39 Eliz. c. 4. He may be sent to the Place of his Birth, but then by 43 Eliz. c. 2. He may be sent from thence as a poor Person, to the Place of his last legal Settlement; for his being sent to the Place of his Birth, satisfies the Statute of 39 Eliz. and so both the Statutes stand together. Per Holt C. J.

Dominus Rex versus *The Inhabitants of Audly*. Mich.
12 Will. III. B. R.

(8)
A standing
Rate cannot
be made, but
must be varied by
Circumstances.

AN Order of Sessions made upon an Appeal from a Poor's Rate, being removed into this Court by Certiorari; the Case was, on Sept. 1. 1665. a certain Rate was agreed to by the Inhabitants of the Parish of Audly; which had been followed ever since till the last Year, when a new Rate was made. Upon Appeal to the Sessions the new Rate was quashed, and the old one ordered to stand; and now it was objected, that it did not appear this was a Poor's Rate, being called a Parish-Levy, which might be as well for the Church as the Poor, and then the Justices had no Jurisdiction; Darnel, The Court will intend it. Holt C. J. Twysden used to say, If a particular Jurisdiction does not shew the Matter to be within its Authority, it must be taken to be out of it. Mr. Parker took another Exception, viz. That the whole Rate could not be quashed at the Complaint of one Man; and also that the old Rate, however just at first, might be unequal now, and therefore the Justices could not make a standing Rate, which last suit concessum per Holt C. J. for Lands may be improved. By 43 Eliz. the Rate must be equal; ergo it ought to be continually altered, as Circumstances alter. The Justices could not confirm an old Rate, and in this their Order is naught: And by him it was said in this Case, That tho' the Justices at Sessions need not give a Reason for their Order; yet if they give a Reason which is wrong, we must be guided by it, and quash the Order, because it appears to us to be no Reason.

Inter

Inter the Inhabitants of Mynton and Stony-Stratford.
Mich. 13 Will. III. B. R.

By Order of the Justices a poor Person was sent to Mynton: Mynton appealed to the Sessions, and the Order was discharged, and then by Order the Person was sent to Stony-Stratford, who appealed, and the Order was confirmed; and then by another Order the Person was sent back to Mynton. Et per Curiam. The last Order to send him to Mynton was illegal. Per Holt C. J. If on Appeal to the Sessions, an Order be discharged, that Judgment binds only between the Parties. But when upon an Appeal an Order is confirmed, that is conclusive to all Persons as well as to the Parties, for 'tis an Adjudication that this is the Place of the Party's last legal Settlement, which cannot be avoided by the Parish against whom it is made. It was also held, That a Parish in Reputation is liable, if there be Officers, i. e. Church-wardens.

(9)
Reversal on Appeal is final only between the Parties, but Confirmation is conclusive against all the World.
Vide ante Pa. 486, &c. Ib. & Pa. 524.

Anonymus. Pasch. 1 Ann. B. R.

HOSPITAL Lands are chargeable to the Poor as well as others; for no Man, by appropriating his Lands to an Hospital, can discharge or exempt them from Taxes to which they were subject before, and throw a greater Burthen upon their Neighbours. Per Holt C. J.

(10)
Hospital Lands are chargeable to the Poor.

Inter the Parishes of Farringdon in Berks, and Witty in Oxfordshire. Pasch. 1 Ann. B. R.

S. C. Post. Pl. 13.

AServant came into the Parish of S. was hired for a Year, and having served half a Year of the Time, married a Woman in the Parish of Witty; and the Question was, 1st, Whether the Justices on Complaint of the Church-wardens could make an Order to remove him to the Place of his last legal Settlement? 2dly, Whether his serving here would not gain a Settlement? To the first Point it was admitted, That the Contract between the Master and Servant was not dissolved by the Marriage; and that admitting it might be dissolved by an Order made on Complaint of the Master, yet without that, and upon Complaint of the Officers only, it could not be dissolved; therefore Broderick (of Counsel) admitted that the Justices could not in the principal Case so remove him, as that he could not come to serve his Master, but held he might be removed, so as that the Order should disturb him and prevent a Settlement; and this he said was a Medium

(11)
Unmarried Person hired for a Year, marrying before the Year is expired, cannot be removed, and performing the Service, gains a Settlement.
Vide ante Pl. 6.

dium that would neither prejudice the Contract nor evade the Statute. He compared it to an Order to remove on 14 Car. 2. before forty Day's Stay; in which Case the very making of the Order obstructed a Settlement; and it may be executed after the forty Days. Holt C. J. and Powell contra, That an Order to disturb him and not to remove him, was not within the meaning of the Act; disturbing him, without power to remove, is vain; and this does not unsettle, nor is it like the Case of forty Days. *Reply*, It was questioned, Whether such a Stay, &c. would gain a Settlement; because the Statute makes the Party's being unmarried, a Qualification as well as his Stay, viz. If any such Person, being unmarried, being hired, &c. Such Service, &c. So that the Words such Service goes to all, not only the Stay, but the State of the Party. To this Powell inclined, Holt C. J. contra; Such is only such Service, and the Marriage does not hinder the Service; the Contract continues; and suppose the Woman he marries be of the same Parish, shall not that gain a Settlement?

Inter the Inhabitants of the Parishes of Cumner and Milton in the County of Berks. Trin. 1 Ann. B. R.

(12)
Father settled at A. moves to B. with his Children, and gains a new Settlement there, and so do the Children, tho' under the Age of seven Years. Vide ante 427, 470.

UPON a special Order of Sessions the Case was, H. was settled at Cumner, and had several Children born there: Afterwards he removed to Milton, and gained a Settlement there, by renting a Tenement of the Value of 10 l. per Annum. He became Poor, and his Children under the Age of seven Years were sent back to Cumner by Order of two Justices, which was confirmed at the Sessions. Powell J. held, That when a Child is sent with the Parents by reason of Nurture, it gains no Settlement; but here the Children did not come to Milton by Order. The Childrens Settlement shall not be divided from the Father, for that would be unnatural. When a Man gains a Settlement for himself, his Wife and Servants, he shall gain a Settlement for his Children also; but if a Widow having Children under the Age of seven Years, marries a Man of another Parish, the Children shall go with the Mother for Nurture, but after seven Years of Age they shall be sent back to the Parish where their Father was settled, for she cannot gain a Settlement for them in this last Parish, being under Coverture, and having a Settlement there her self only as part of her Husband's Family, from whom she cannot be severed. Holt C. J. Birth is a Settlement, and the first Settlement, and there must be another second Settlement by forty Days, &c. to alter the primary Settlement. A Child under the Age of seven Years is accounted a Nurse-Child. If a Child be put out to Nurse, or for Education, tho' it be above seven Years old,

old, it gains no Settlement thereby, as it was held in Sir Paul Jenkinson's Case. The Question here is, Whether the first Settlement by Birth be altered? It is hard I confess to remove the Child from the Father. Could I. The Child may be removed after the Age of seven Years, but not before; he is sent with his Father for Nurture only. Holt C. J. Suppose the Father and Mother come to A. and then go to the Parish of B. and within forty Days the Mother be delivered of a Child; the Child, tho' legitimate, shall be settled where it was born. The principal Case is fit to be well considered; the Father indeed ought to maintain his Children, but the Question is, Whether the Children by living with the Father gain a Settlement? The Justices cannot remove the Children from the Father till he fall to Decay. Afterwards this was moved again. Et per Holt C. J. the Question is, When the Father comes with his Children to Milton, and gains a Settlement there, whether that does not also give a new Settlement to his Children, and unsettle them as to Cumner, the Place of their Birth? If a Father be settled and die, his Wife being big with Child, and after that the Mother dies before she is delivered, and afterwards the Child is born, the Child is settled there by his Birth. In this Case the Settlement of the Father at Milton, is a Settlement to the Children. The Child is settled by Birth only, where 'tis an accidental Settlement. The Order was quashed.

Inter the Parishes of Farringdon and Wilcot.

Pasch. 2 Ann. B. R.

H Being single, was hired for a Year; after he had served three Quarters of the Year, he married; and the Justices removed him to his Place of last legal Settlement. Et per Cur. The Contract being good, the Justices have no Power to remove him from his Master before the End of the Year; for they cannot annul the Agreement between Master and Servant, unless it be upon Complaint of the Master. Settled or not settled, was not before the Court. But as to that, viz. Whether such Person serving out the Year would gain a Settlement? Holt and Gould held, the Word unmarried went only to the hiring. Powell contra, That it went to the whole Service by reason of the Word such.

S. C. ante Pl. 11.

(13) and Unmarried Person hired for a Year, marrying before the Year expired, but performing the Service, gains a Settlement. Vide ante Pl. 6.

Inter

Inter the Parishes of Little-Kire and Woolfall.

Trin. 2 Ann. B. R.

(14)
Certificate-
man is not
removeable
till actually
chargeable.
Vide infra &
ante 497, 591.

A Parishoner of the Parish of A. came to B. with a Certificate according to the late Act of Parliament, and the Justices reciting that Matter, and because he was likely to become chargeable to B. sent him back to A. Winnington moved to quash the Order; because he is not removeable till he is actually chargeable by the express Words of the 22, 8 & 9 W. 3. c. 30. Et per totam Curiam, the Order was quashed, nisi 391. Broderick agreed the Exception, but said the Reason of the Removal was, because the Certificate was wrong, and that the Sessions have Authority to this Matter; for on Appeal lies to them within the Equity of 14 Car. 2. where a Certificate is made and signed by two Justices. Powell J. contra. If there was a Fault in the Certificate, it ought to appear to be the Reason why he was sent back, and the Justices at Sessions have not a Jurisdiction by Way of Appeal upon such a Certificate.

Inter the Inhabitants of Malden and Fletwick.

Trin. 2 Ann. B. R.

(15)
Order of Re-
moval of Cer-
tificate-man
must adjudge
him to be
actually
chargeable.
Vide ante
497, 591,
& supra.

A Order was made reciting, That whereas Complaint has been made unto us by the, &c. that J. S. who is lately come into the Parish of, &c. with a Certificate according to 8 & 9 W. 3. is actually chargeable to the Parish; and quashed; for the Justices must adjudge him to be chargeable, or at least must say it appeared to them that he was so; but the Justices need not adjudge the Place that gives the Certificate to be the Place of his last legal Settlement.

Inter the Parishes of All-Saints and St. Giles's in Northampton.

Trin. 1 Ann. B. R.

(16)
Certificate
concludes
the Parish gi-
ving it, only
against the
Parish to
which it is
given.
Vid. Post. 535.
Case of Ho-
niton contra.

UPON an Appeal a Special Order was made, and the Case was, One was born at A. and came and lived at B. some Years, but never gained any Settlement there, then he removed to C. for Convenience of getting his Livelihood, and B. gave him a Certificate according to the late Act. The Man became chargeable, and was sent back to B. who found that he was last legally settled at A. and sent him thither. Et per Holt C. J. The Reason of the Act of Parliament about Certificates, was only to encourage Parishes where poor Persons were minded to go, to re-

ceive

ceive them; and therefore it enaas, That when the poor Person shall be chargeable, the Parish which gave the Certificate shall receive and provide for him as a settled Inhabitant, which Words lay an Obligation upon the Parish which gave him the Certificate to receive and provide for him against that Parish which they gave the Certificate to. But as to all other Parishes, they are as they were before, for the Conclusion is only by reason of the Words of the Act of Parliament, which extend only to the Parish to which he was sent; by Consequence the Conclusion can extend no farther. Powell J. This Way of giving Certificates was a Thing commonly practised before this Act of Parliament, and it was made only to oblige the Parish who gave the Certificate to receive him again of the other Parish to which the Certificate was given: But the Intent of that was not to make a new Settlement which was not before. But per Holt C. J. Such Certificate is a mighty Evidence before the Justices; and so is a Demand and Refusal of a Conversion, which yet being specially found, will not be a Conversion.

Tawny's Case. Hill. 2 Ann. B. R.

TAWNY, being Overseer of the Poor of Little Port in the Isle of Ely, laid out his Money in the Relief of the Poor, and was turned out of his Office by the Justices, before the End of the Year, by which means he lost the Opportunity of making a Rate to reimburse himself: Upon this he obtained a Mandamus directed to the Churchwardens and Overseers of the Poor, to make a Rate to reimburse him; Mr. Parker and Mr. Eyre argued, That there could be no such Charge, neither by Common Law nor by the Statute 43 Eliz. Et per Holt C. J. We cannot order the Parish or Overseers by a Mandamus to make a Rate to raise Money to reimburse an Overseer, but only to raise Money for the Relief of the Poor, nor can they make a Rate otherwise: The Act of Parliament is expressly so, and must be pursued: An Overseer is not bound to lay out Money till he has it; if he does, he must make a new Rate for the Relief of the Poor, and out of that he may retain to pay himself: Tawny should have done so; he trusted where he needed not have done it; he has not pursued the Means the Statute gave him, and we cannot relieve him. Et per tot. Curiam. The Mandamus lies not; ideo cassatur. Et nota per Cur'. The Churchwardens and Overseers may make a Rate of themselves. Weld and Page, pro le Mandamus.

(17.)
No Mandamus lies to the Overseers to make a Rate to reimburse former Overseers.
Vide pag. 484 & ante pl. 5.
6 Mod. 97.

Rate must be for the Relief of the Poor.
Ante pl 3.

Inter the Parishes of Westbury and Colton. Hill.

2 Ann. B. R.

(18)
 Bastard born
 at A. pending
 an Order of
 Removal
 from B. after-
 wards rever-
 sed, is settled
 at B
 Vide ante
 427, 485, &
 528.

A Woman big with Child was removed by Order of the Justices from Westbury to Colton, and pending the Order before the next Quarter-Sessions, he was delivered of a Bastard-Child: Colton appeared, and thereupon the Order of the two Justices was reversed; but the Child was sent back to Colton, as the Place of its Birth. Et per Holt C. J. Tho' here be no fraud, here was a wrongful Removal, and the Reverend makes all void ab initio: Fraud, or not Fraud, is not material in this Case; but the Settlement of the Child depends upon the Removal, for if that was wrong, they shall not take the Child by it.

Tracy versus Talbot. Trin. 3 Ann. Coram Holt C. J.
 At Nisi Prius.

(19)
 Assessments
 for the Poor
 ought to be
 raised monthly.

H. Cook Part of a House in the Parish of D. on the 30 Day of Decemb. and was rated as an Inhabitant, and was distrained for a Quarter's Rate the Christmas following; but the Districts was taken before Christmas on a general Warrant made for the whole Year; and in Replevin upon Certificate it was ruled per Holt C. J. 1st, That if two several Houses are inhabited by several Families, who make and have but one common Chimney or Entrance to both, yet in respect of their Original, both Houses continue rateable severally, for they were at first several Houses; and if one Family goes, one House is vacant: But if one Tenement be divided by a Partition, and inhabited by separate Families, viz. the Owner in one, and a Stranger in another, these are several Tenements, severally rateable, while they are thus severally inhabited; but if the Stranger and his Family go away, it becomes one Tenement. 2^{dy}, That H. could not be rated for the whole Quarter, for Poor's Rates are to be assessed monthly by the Statute; and by this Means a Man cannot move in the Middle of a Quarter, but he must be twice charged. 3^{dy}, That H. could not be distrained by Virtue of the general Warrant made before the Rate; but there ought to be a special Warrant on purpose. 4^{thly}, That a Districts could not be taken for a Quarter's Rate before the Quarter was ended; but the Jury said the Child was otherwise.

I

Do-

Domina Regina *versus* Hedges. Mich. 4 Ann. B. R.

A N Order was made at the Quarter-Sessions upon Appeal: The Case was, Hedges, an Overseer of the Poor, accounted before two Justices, and this Account was allowed; the Parish appealed to the Quarter-Sessions from this Allowance, and they disallowed the Account, and ordered him to pay so much over, which they adjudged to be in his hands; and for not doing this, they committed him. Mr. Eyre moved to quash this Order, because by 43 Eliz. c. 2. sect. 4. they should have levied the Arrears by Distress and Sale, and in default of Distress have committed him: And the whole Court agreed, That the Justices at the Sessions upon the Appeal must execute their Judgment in the same manner as the two Justices must do, and that the two Justices must have lent their Process to distrain, and upon a Return to that, that there was no Distress, should have committed him. Then Darnell moved that it might be only quashed as to this Part: Quod fuit concessum per Cur. Then Mr. Eyre objected to that, viz. That the first Order, as recited in the Order of Appeal for the Allowance of the Account, was not by two Justices Quorum unus; sed non allocatur: We cannot judge of that upon a Recital, so as that you may take Advantage of it; you must bring in that Order by Certiorari.

(20)
Upon Appeal from Allowance of Overseer's Accounts, Sessions must execute their Judgment in the same manner as two Justices ought to do. Vide ante 525. pl. 5, &c. ib. & 6 Mod. 77, 97.

Inter the Parishes of St. Bride's and St. Saviour's.
Hill. 4 Ann. B. R.

A Poor Person was sent from St. Bride's in London to St. Saviour's in Southwark, and upon an Appeal a special Order was made: The Case was, B. was bound Apprentice for four Years to J. S. and lived out these four Years at St. Bride's with him; J. S. was only a Lodger and had no Settlement there. And the Court held the Apprentice was well settled in St. Bride's, for he was not a Person removeable, nor does his Settlement depend on his Master, as that of a Wife on her Husband for a Settlement; but he gains a Settlement for himself within 14 Car. 2. by forty Days Inhabitation, and so of a hired Servant; but the Matter went off upon another Exception.

(21)
Apprentice may gain a Settlement, tho' the Master has none. Ante 479. pl. 28.

Jenkin's Case. Pasch. 5 Ann. B. R.

(22)
Order to re-
lieve his Fa-
ther till Ses-
sions order
the contrary,
good.

A B Order of Sessions was made, that the Defendant should pay 2 s. per Week towards the Support of his Father, till that Court should order the contrary; which was held good, because it was indefinite, and no set Time limited; and if an Estate happened to fall to him, they might apply to the Justices; otherwise if a Time was limited.

Domina Regina versus The Inhabitants of Buckingham.
Pasch. 5 Ann. B. R.

(23)
Nothing
makes a Set-
tlement with-
in 3 & 4 W.
& M. that is
not within
the very
Words.
Vide ante
478, 523, 524.
post 536.
1 Show. 12.

A Special Order was made, wherein the Case was: H. being a poor Person went to Buckingham, where he took Part of a House of W. T. at 3 l. per Annum, and insisted when he took this Apartment, that he would pay no Taxes for it, but that the Lessor should; this was agreed to, his Rent being the more and the greater upon that Account: This appeared upon Evidence, and also that this Apartment before the Taking, and while he continued in it, was distinct from the rest of the House without Communication, and was taxed as a House of it self, and that the Tax was laid upon W. T. the Lessor, and that while H. lived there he took his Freedom in the Corporation, and once voted as a Freeman at the Election of Bailiffs for the Corporation. The Justices at the Quarter-Sessions adjudged this to be a good Settlement: But upon the Motion of Serjeant Broderick it was quashed: He insisted that since the explanatory Act 3 & 4 W. & M. nothing makes a Settlement within that Statute that comes not within the Words; an explanatory Act implying a Negative of any Thing else. Et per Holt C. J. and Powell J. Coming into a Parish and being taxed by the Parish, made a good Settlement without a Notice in Writing within the Statute Jac. 2. But the Law is altered by 3 & 4 W. & M. and as to his Voting they could not take Notice that that implied a Settlement; for a bare Residence might, by the Constitution of the Corporation, intitle him to that, and his Voting was an Act that related to the Corporation and not to the Parish.

*Inter the Inhabitants of the Parish of Dunsfold and
Ridgwick. Mich. 9 Ann. B. R.*

It appeared by a Special Order, that one was hired as a Servant to live at Ridgwick for half a Year, and after that was hired again to live there for another half Year with the same Person, and thereupon served a Year in one continued entire Service, but by several Hirings: Sir Peter King urged, That here was a Service for a Year, and a hiring for a Year, tho' by several Contracts; and that the hiring need not be by one entire Contract, and that so it had been held; and he cited a Case, where H. took a Tenement of 5 l. a Year, and also another Tenement of 5 l. a Year and occupied both; and this was held to be a Renting of a Tenement of 10 l. per Annum. Et per Cur. It ought to be one entire Contract and one entire Service; the one is required by the Statute as well as the other. If a Service under several Contracts shall gain a Settlement, one that serves by the Month, by the Week, or by the Day, may, if he continues a Year, gain a Settlement; one may hire by the Day for Charity; but there is danger of being chargeable in hiring such a Person by the Year: For such a Term as a Year it is not supposed a Master would hire one, unless able of Body, and so a Person not likely to become chargeable. Also the Chief Justice observed, that by the Statute of Eliz. the Retainer of Servants was for a Year; that 14 Car. 2. requires forty Days Stay, and that this was inconvenient, for by gaining a Settlement in forty Days, Servants grew insolent; and that these latter Acts, viz. 3 & 4 W. 3. c. 11. 8 & 9 W. 3. c. 30. do but turn the forty Days Service into a Year's Service, and the hiring to be a Retainer for a Year according to the Statute of Eliz.

(24)
Two several Hirings for half a Year, and Service for a Year, not sufficient to gain a Settlement.

*Inter the Inhabitants of the Parish of Honiton and
St. Mary-Axe. Mich. 9 Ann. B. R.*

H Came to Honiton with a Certificate from the Parish of A. after this he went to the Parish of B. and now being sent to the Parish of A. the said Parish offered to prove that he was settled at the Parish of St. Mary-Axe; and the Question was, Whether A. was bound by the Certificate as to Honiton only, or concluded as to all Parishes whatsoever? Et per Cur. Before the Statute a Certificate was only an Evidence of a private Undertaking between the Parishes, in the Nature of a Contract; but now 'tis a solemn Acknowledgment, like the Conuizance of a Fine: And thereby the Party is owned to be legally settled

Vide ante
530. con.

(25)
Certificate concludes the Parish giving it, as to all the World.

Vid. the Case of St. Giles's in Northampton, ante Pl. 16. contra.

settled there, and that they will provide for him; and as all other Parishes on this Certificate are bound to receive him, so the Parish that certifies is concluded as to all other Parishes. And there is no Reason why it should differ from an Adjudication, since this is the Acknowledgment of the Parish signed by the proper Officers, and made before two Justices of Peace, who are proper Judges, and upon less Evidence could have adjudged it a Settlement, by which Sentence all Parties would be bound, and there is no Remedy but to repeal it.

Inter the Parishes of Evelin in Oxfordshire and Rentcomb in Gloucestershire. Hill. 10 Ann. B. R.

(26)
Renting a
Mill of 10 l.
per Annum
gains a Set-
tlement.

Vid. ant. 492, 524. 1 Show. 12. Farell. 54.

A B Order was drawn up specially to have the Opinion of the Court, whether renting of a Water-Mill of 10 l. per Annum, would make a Settlement? Et per totam Curiam clearly, a Mill is a Tenement, and the Renting thereof must gain a Settlement within the Statute.

Inter the Parishes of Gatton and Milwich.
Hill. 10 Ann. B. R.

(27)
Parish Clerk
nominated
by the Parson
is in for Life,
and gains a
Settlement.
Vide ante
478, 523.
1 Show. 12.

A B Order was drawn up specially for the Opinion of the Court, and the Question was, Whether one appointed Clerk of the Parish by the Parson, and executing the Office for a Year, would gain a legal Settlement within 3 & 4 W. & M. of which the Words are, viz. shall execute any annual Office or Charge? For it was objected, that this was not an annual Office. Mr. Lechmere contra: The Intent of the Act was, That no Office under an annual one should gain a Settlement, and major continet in se minus. On the general Nomination to the Office of Parish Clerk he is in for Life. Powell J. his being put in by the Parson makes no Difference, no more than where the Constable is put in by the Leet and not by the Parish; 'tis more than an annual Office, he is not removable and has Fees. Eyre J. he is but a Servant to the Parson at Will: Where he comes in by Election, he has an Estate for Life by the Custom, but here is no Deed or Writing: How can he have an Estate for Life in this Office? Powell J. At that Rate he has not an Office at Will; for a Man cannot have an Office at Will without Deed. The Office of Church-warden was by Common Law, and yet that is for a Year without any Deed or Writing. So 'tis of a Parish Clerk, he is by Common Law an Officer, and is in for Life without Deed; so ruled absente Parker C. J.

POWERS.

Lutw. 1464.
4 Mod. 265.
1 Mod. 318.
6 Co. 33.
8 Co. 70.
4 Co. 70.

Winter *versus* Lovedore. Mich. 9 W. III. B. R.

In Examinat. a Special Verdict was found, That G. P. was
owned of the Manor of M. and by the Marriage of his
Son, settled the said Manor to the Use of himself for
Life, Remainder to his Wife for Life, Remainder to his
Son in Tail, with a Proviso, That he should have Power
during his Life, and so the Wife after him, to demise the Pre-
misses in Possession, for one, two, or three Lives, or in Rever-
sion for one, two, or three Lives, or thirty Years, or for any
Number of Years determinable on one, two, or three Lives, so
as such Demise be not of the Demesne Lands. G. P. reciting that
J. S. and his Wife held a Copyhold Tenement for Life, demised
the said Copyhold Tenement to the Lessee for thirty Years, to be-
gin after the Death, Surrender, or Forfeiture of J. S. and his
Wife; and the Question being, Whether this Lease of a Copy-
hold was pursuant to, and warranted by the Power? It was held
in this Case by Holt C. J.

S. C. 1 Mod.
244, 245,
378, 379.
Vid. 6 Mo. 23.
Power to de-
mise my
Lands, ex-
cept the de-
mesne Lands
of the Manor.
Copyholds
are within
the Excep-
tion.
Vid. Ray. 132.
Pop. 9.
Yelv. 222.
Moor 491.
2 Lev. 63,
149, 150.
1 Lev. 150,
241.

1st, That any Lease, to commence in futuro, is in some Sense
a Lease in Reversion, as it is opposed to a Lease in Possession;
but a Lease within such a Power must be construed of a Lease to
commence in Possession after another Lease or Interest already
created before the Reservation of the Power and not after; and that
a Lease to commence after any other Lease, is properly a Lease
in Reversion; but that a Lease for Life, to commence after ano-
ther Lease in being, is a concurrent Lease: because a Freehold
cannot cypea, but must commence in Possession presently; how-
ever, this may be said to be a Lease in Reversion within such
Powers.

2dly, That G. P. might make a Lease in Reversion absolutely
for thirty Years, by Virtue of this Power, because the Limita-
tions and Restrictions are disjoined, and the later Part is car-
ried on by Way of Enlargement of the Power; to which Turton
and Eyre agreed, Rokeby dissentiente.

3dly, That this Lease was void, because it was of Copyhold
Lands; for by a Grant of the Demesnes the Copyholds will pass;
and by the same Reason, by excepting the Demesnes the Copy-
holds

holds are excepted; and the rather, because the Power is derived out of the Inheritance, and the Tenant at Will by his Leases might destroy the Copyhold, which is unreasonable; and if there were nothing else for the Power to work upon in this Case, he may by Virtue thereof demise the Rents and Services.

Lord Kilmurry contra Geery. Pasch. 12 Ann. In Canc'.

(2)
Power to
charge Lands
with a Sum
of Money,
imports In-
terest thereof
also.
Vide Chan.
Rep. 18, 23,
281, 363, &c.

It was held, That if a Man has Power to charge Land with any Sum not exceeding the Sum of 3000 l. he may charge it with 3000 l. and the Interest besides; for the Intention is to charge the Premises with 3000 l. principal Money, and that of Course carries Interest, and none would lend such Sum on such Security, if the Law were otherwise.

P R E S C R I P T I O N .

Star versus Rookesby. Mich. 9 Ann. B. R.

Vide Title Fences, Vol. 1. pag. 335.

Pre-

Presentation, Admission, Institution, Induction.

Vide Hob.
302.
3 Leon. 47.
6 Co. 57.
1 Leon. 230.
2 And. 49.
Cro. El. 518.

Hele versus The Bishop of Exeter. Mich. 3 W. & M. B. R. S. C. 3 Lev. 313.
4 Mod. 134. Lutw. 1094. Parliament Cases, 88.

IN Quare Impedit the Bishop pleaded, That the Church became vacant on the 15th Day of April, and that the Plaintiff presented to him on the 19th Day of May following, one Hodder; That he examined Hodder, and found him personam minus sufficientem in literaturâ, ac eâ ratione fore personam inhabilem & minimè idoneam ad habend. beneficium cum curâ animarum, and therefore refused him on the 20th Day of June, and gave the Plaintiff Notice; and because no other was presented within six Months after the Avoidance, he collated the other Defendant (the Incumbent) who was instituted. The Incumbent pleaded to the same Effect. The Plaintiff replied, that Hodder, at the Time of his Presentation, was Vicar of another Church. That he was Homo literatus, and in Priest's Orders; that he was licensed to preach; and had celebrated Divine Service many Years, and was sufficientem literatus to celebrate the same. There was a Resolinder and Surrejoinder (which were laid out of the Case) and thereupon a Demurrer. Et per Cur. 1st, The Ordinary must examine in convenient Time, and after that, refuse in convenient Time; if he does not, he is a Disturber by his Delay. 2dly, If the Ordinary refuse, quia criminofus, he need not give Notice of his Refusal, for the Crime is as much in the Countenance of the Patron as of the Bishop, and in that Case the Lapse shall incurr from the Avoidance; but if he refuse, quia illiteratus, he must give personal Notice, and the Lapse shall incur from the Refusal. 3 Cro. 119. 1 Lev. 31. Dy. 327. 2 Ro. 364. 3dly, That the Ordinary might well refuse him now, as unfit for this Cure, tho' he had been allowed for a former. 4thly, It was not determined what Learning was necessary: While the Liturgy was in Latin, that Language was undoubtedly necessary; now indeed the Liturgy is in English: But it was observed that 13 Eliz. c. 12. requires a Clerk should be able to answer his Ordinary, and give an Account of his Faith in Latin, according to the Articles. 5thly, The Court held this Pleading too general.

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S

be.

(1)
Where the Ordinary refuses quia insufficientem in literaturâ, he must shew in what particular.
Vide 5 Co. 57, 58.
1 And. 189, 190.
3 Leon. 198, 199, &c.
Cro. El. 242.
Hob. 296.

Ordinary may examine and refuse; but it must be in convenient Time.

Must give Notice of his Refusal, if it be quia illiteratus; secus if criminofus.

because it was not shewn what Learning he was defective in, whereas it ought to be certain, because it is traversable; and if the Clerk die, to be tried by a Jury and the King's Courts to judge of it; and the Law will the rather require a Certainty, because this Answer is to disable a Man in his Profession, and prevent him of a Freehold. Judgment was given for the Plaintiff.

S. C. 3 Lev.
382, &c.
4 Mod. 190.
1 Show. 164.

Dominus Rex & Domina Regina versus *The Bishop of London and Dr. Birch.* Mich. 7 Will. III. B. R.

(2)
Where a new
Advowson is
created by
Statute, it is
subject to the
same Rules of
Law and Pre-
rogatives of
the Crown as
an old one.

IN a Quare Impedit against the Bishop of London and Dr. Birch, for hindring to present to the Parish-Church of St. James's, the Declaration set forth, That St. Martin's in the Fields being a great Parish, an Act of Parliament was made 1 Jac. 2. to take the Parish of St. James's out of it, and make it a Parish of it self with Cure of Souls, and Dr. Tennison, who was then Vicar of St. Martin's, the first Rector; and appointing the Patronage after the Death of Dr. Tennison, to the Bishop of London and his Successors, and the Lord Jermyn and his heirs alternately: Virtute cujus Dr. Tennison was first Rector, and being so, was afterwards made Bishop of Lincoln, whereupon it belonged to the King and Queen to present by Prerogative; to this the Bishop demurred, and Dr. Birch pleaded the Statute of 25 H. 8. and that by Vertue of the said Act, the Archbishop of Canterbury gave Dr. Tennison a Dispensation to hold this Church in Commendam, which the King confirmed, from the 22d Day of October till the first of July following, &c. To this the Attorney-General demurred. 1st, It was objected for the Defendant that this Prerogative was unreasonable; but the Court answered, That since the King made the Church void, it was no hard Matter that he should be allowed to fill it, and the Patron was not much hurt, for it was only one Life exchanged for another; and Sir Giles Eyre held, That if a Parson be promoted to be a Bishop, the Church was void by the Common Law; but the Reason of it was not from the Incompatibility, because originally the Bishop was Incumbent of the whole Diocese, and served the Cure by others; and the Court did admit that the Crown did not anciently exercise this Prerogative, but the Pope did by Usurpation; and that notwithstanding the Statute of Provisors 25 E. 3. the Pope would collate if the Incumbent was made a Bishop, 4 E. 3. 5. Owen 144. Then 7 H. 7. c. 8. was made against Provisors, but notwithstanding that the Pope went on. Vide Cotton 458. Mo. 399. 3 Cro. 526. Owen 144. Win. 94. 2 Cro. 691. Dy. 228. which was but a sudden Opinion.

Before the
Reformation
the Pope pre-
sented upon
Promotion of
the Incum-
bent.

2dly, They held, That the King's Turn was not served by confirming the Commendam; for the Dispensation was only to save the Avoidance, and the Confirmation continued the Possession, but transferred no Right.

3dly, This being a new Patronage created by Act of Parliament, not in esse before, which appoints a particular Person to have the first Turn after the next Avoidance; it was objected, That no Body could say the King should present, when the Act said otherwise; and this was therefore a Case exempt from the Prerogative: But the Court held that the Act did not interfere with the Prerogative. If an Estate Tail is created by Act of Parliament, it is subject to such Bars as other Lands intailed are. The Wife shall be endowed of a new Estate. Vide 8 Co. The Prince's Case; a pari ratione a new Rectory shall be subject to the King's Prerogative.

4thly, It was objected, That this new Church, as to D. Tenison, was a kind of Donative, he coming in without Institution and Induction, and that the presentable Parsonage does not commence till after him by the Words of the Statute; and that in Case of a Donative, the Promotion of the Incumbent does not make a Cession.

Sed Curia contra; For in Point of Estate, the Right of Presentation commences by the Passing of the Act immediately; but in Point of Interest, not till the Avoidance. Vide 3 Cro. 323. 10 Co. 107. 4 Mod. 190. Shower 164. 3 Lev. 352. S. C.

Ladd versus Widdows Mich. 1 Ann. B. R.

UPON a Motion by Serjeant Selby for a new Trial in a Quare Impedit, wherein the Point in Issue was, Whether the Church was Donative or Presentative? Evidence was pretended of several Presentations; and the Court, viz. Holt C. J. and Powell J. held, That tho' a Presentation might destroy an Impropriation, yet it could not destroy a Donative, because the Creation thereof was by Letters Patent, whereby Land is settled to the Parson and his Successors, and he to come in by Donation.

(3)
Presentation may destroy Impropriation, but not a Donative.

Vide 1 Lev.
204.
Hale's P. C.
215 to 225.
Hawk P. C.
310, 311, &c.

Principal and Accessary.

Domina Regina versus Nash. Mich. 1 Ann. B. R.

(1)
Who is an
Aider and As-
sister in Deer-
stealing with-
in 3 & 4 W.
& M. c. 10.
N. B. Farrell
129 to 137.
Vide Cro.
Car. 340.

UPON a Conviction of Deer-stealing by Justices of Peace on the late Statute, the Question was, Whether one not present, but procuring, abetting, and assisting, by lending his Gun, Dog, &c. before the fact, should be said to be aiding and abetting therein? Holt C. J. inclined, in, That he was not within the Statute, not being actually present at the fact, because the Statute is to be construed strictly, for that it takes away the Privilege of a better Trial, viz. per pares. And, because it adds a further Penalty to what was an Offence before: He said there might be an aiding and abetting before the fact, viz. by Advice, &c. or in the fact by being present; or after the fact, by abetting the Party. Vide Dy. 187. Co. Ent. 56. The other Judges held Aiders in the fact would be Principals, and then Aiders and Abettors would mean nothing. Quod Holt negavit, saying, All that are present may be said to be Principals as to an Action of Trespass, but not as to the Penalty of this Statute: And this Diversity is apparent in other Cases, for one aiding and assisting upon the Statute of Strabbing, shall have his Clergy, whereas a Principal shall not; so in the Case where two went to break a House, one broke it and entered, the other stood upon the Ladder and received the Goods; he that stood upon the Ladder shall have his Clergy, and the other shall not, being a Principal.

Vide Kely.
32. 33.
1 And. 116.
100 and 1001
continued

Domina Regina versus Whistler. Hill. 1 Ann. B. R.

(2)
Where Sta-
tute makes an
Offence Fe-
lony, Acces-
saries (pro-
perly) are
within it, tho
not named;
otherwise
where it
makes a par-
ticular Fel-
ony more penal,

ROLFE and others were convicted of Deer-stealing upon 3 & 4 W. & M. c. 10. and that Whistler was illicite & injuste auxilians & assistens præfat. Rolfe, &c. in illicita & injusta venatione & occisione Damæ præd. viz. persuadendo & incitando præfat. Rolfe to kill the same Deer, and lending Dogs to hunt and kill, and Horses to carry away the said Deer, contra formam Statuti; and whether this was an aiding and assisting within the Statute, was the Question. Powell, Powys, and Gould

Could Justices, held that it was; but Holt C. J. contra held, That the Condition ought to be qualified, for that where a Statute makes that Felony, which was not so at Common Law, Aiders and Abettors, according to the Notion of the Common Law, are within the Statute, tho' not expressed; but where an Offence at Common Law is only made more penal, Aiders and Abettors are not to be understood of such as aid before and after the Fact, but such as are present only: These were only Accessories at Common Law, and are not within the Act. Vide 1 Cro. 474. Dal. 11, 22. *Poles in the same Case*; Holt C. J. said, he held the same Diversity with this farther, that this is to be understood when an Offence at Common Law is made more penal by a particular Description of the Fact, and not under a general Denomination of the Crime; as if this Statute had enacted these Penalties on them, as Trespassers, as 'tis done by the Statute de malefactoribus in parvis. Vide 1 And. 116. Hale 51, 216.

3 Cro. 750.
12 Co. 86.

Privilege of Persons.

Vide 3 Lev.
343, 393.
Lutw. 196,
197, 641, &
Cro. El. 138.

1466. 1 Sid. 319. 2 Sid. 164. 1 Vent 137.

Kirkham versus Wheely. Trin. 7 Will. III. B. R.

TW an Action qui tam, the Defendant pleaded that he was an Attorney of the Court of Common Pleas, and that Attorneys de C. B. were not suable elsewhere: To this the Plaintiff demurred, 1st. Because the Plea is only in the Negative, and no Jurisdiction is given to any other Court. 2dly, Because there is no Defence by Venit but Dicit only. Per Cur'. As to the Plea being in the Negative it is well enough; for the Privilege is not traversable and triable per Pais, but a Matter of Law of which we take Notice; and venit & dicit, or dicit only is a sufficient Defence in this Case, 14 H. 6. 14. 19.

(1)
Plea to the Jurisdiction in the Negative is well enough.

Defence by venit & dicit, or dicit only is well in Plea to the Jurisdiction. Vide Prax. Calam.

Vide Prox.
Casum ante.

Stephens versus Arthur. Eodem termino.

(2)
Defence.

3 Lev. 181.
1 Lutw. 7, &c.
2 Lutw. 1590.

The Defendant pleaded to the Jurisdiction thus, viz. Et idem Arthurus in propria Persona seandicte That he is a Clerk to a Prothonotary of the Common Pleas, and it was objected that he did not say, veris & dicte. Per Curiam Vult is no part of the Plea, but dicte begins the Plea and dicte alone shews him to be in Court, and here it appears he is in Custodia.

Lane versus Saltmarsh. Hill 8 Will. III. B. R.

(3)

An Attorney de C. B. being sued by Bill in B. R. Baxton moved he might be discharged: Denied per Curiam for let him plead his Privilege.

Brown's Case. Hill. 9 Will. III. B. R.

(4)
Philizers, &c.
3 Lev. 343.
2 Lev. 129.
1 Lutw. 44.
641, 1466.

A Philizer de B. R. was arrested per breve, but discharged on common Bail; for he ought to be sued by Bill, as præsens in Curia. Per Curiam absente Holt C. J.

*Branchwait versus Blackerby, & al.
Hill. 9 Will. III. B. R.*

(5)

For a joint
Cause of
Action a-
gainst an At-
torney with
another Man,
both must be
arrested.
Vid. 1 Saund.
68, 69.

If a Man hath a joint Cause of Action against two, one an Attorney, and the other not, he must arrest both, and declare against them as in Custody. A Bill cannot be filed against a Person privileged in Vacation, for then he is not present in Court; and as to the Vacation, it begins the last Day of the Term, as soon as the Court rises. (Vide 2 Lev. 129. 1 Vent. 298.)

Note, The Bill must be filed, tho' the Attorney agrees to appear and dispencc with it, but it may in such Case be filed afterwards. Pasch. 9 W. 3. B. R. Robert's Case.

Anonymus. Hill. 2 Ann. B. R.

(6)

Privilege e-
undo & rede-
undo.
Vid Ray. 100.
3 Lev. 343.

He came to confess an Indictment, and the Court held, that he had no Privilege, eundo & redeundo; because there was no Process against him,

Dillon *versus* Harper. Trin. 2 Ann. B. R.

S. C. 1 Salk.
328.
Farell. 106.

AN Attorney de C. B. being sued in B. R. pleaded his Privilege, to which it was demurred specially, for not concluding his Plea with a Profert of a Writ of Privilege, testifying his being an Attorney, &c. Et per Holt C. J. The Difference is, if Privilege of an Attorney be pleaded with a Writ, the Defendant cannot be denied to be an Attorney; if without, he may, and then a Certiorari shall be awarded to certify whether he be an Attorney, or not.

(7)
Where Privilege of an Attorney is pleaded with a Writ, his being an Attorney cannot be denied; otherwise if without.

Scawen *versus* Garrett.

THAN an Action in B. R. the Defendant pleaded, That he was an Attorney of the Common Pleas! On Demurrer Mr. Ward objected, That he ought to produce his Writ, and conclude with a prout patet per Recordum; and also that he laid no Venue, alleging no Place where he was Attorney, nor where the Court of Common Pleas sits. Et per Cur. viz. Holt C. J. to which the rest assented. An Attorney may plead Privilege with a Profert of his Writ, if he will; or with an Exemplification of the Record of his Admission; or he may plead it as he does here, and it is well enough, for so are the Precedents, and the Plaintiff may reply nul tiel record. Vide 1 Brown. 2. Thom. 4. Cliff. 970. Brovis Judicialia 169, 172. Cited per Broderick. 302, There was no need of a Venue to try where he was Attorney, for it being a Matter concerning his Person, was triable where the Writ is brought; so in Trespass, if the Defendant pleads Son villain regardane, and the Plaintiff replies Frank-home, it must be tried where the Writ is brought. As to the 3d, he wondered how that ever came to be allowed; for that this Court send Writs to the Chief Justice of the Common Pleas by that Name; And unless where this is held to be part of the Description of a Record, it can never be necessary.

(8)
Plea of Privilege of an Attorney of C. B. need not shew the Writ under Seal, nor a Venue, nor where the C. B. sits. Vid. 1 Saund. 67.
Farell 97.
6 Mod. 114.

Privilege of Jurors, Raym. 113, 144. 1 Lev. 159.

Privilege of the King's Servants, &c. Raym. 152, 180. 1 Lev. 233, 265.

Pri-

Privilege of Place.

Privilege of
the Exche-
quer.
6 Mod. 303.
ante 511.
Post. 550.
Pl. 12.
1 Lutw. 46.

Superfedeas
to a Suit in
the Exche-
quer, dum-
modo non
tangit nos.

PER Walter Chief Baron, the Causes of Privilege in the Exchequer are, 1st, If one be Informer for the King. 2dly, If one be accountant to the King. 3dly, If one be Debtor to the King. 4thly, Where one is an Officer of the Court, or attends an Officer of the Court. Always where the Plaintiff is privileged, the Suit is by Quo minus; where the Defendant is privileged, the Suit is by Bill. 31 H. 6. 10. 22 H. 6. 19. b.

A Writ was delivered to the Barons of the Exchequer in open Court, commanding them to stay a Suit between Wilson and Rookes, by dummodo non tangit nos vel, &c. and the Writ was disallowed, for that the Defendant might have pleaded that Matter to the Jurisdiction of the Court: It was admitted, That there is such a Writ in the Register, but there are several Writs there which no Usage or Precedent does warrant, of which this is one. Et per Walter Chief Baron, Where one entitled to the Privilege of this Court, is sued in C. B. this Court sends a Superfedeas; but if it be in B. R. they do not send a Superfedeas, for that would be to supersede the King; but the Practice is, to send up the Writ-Book by the puisne Baron, and demand Privilege. Trin. 3 Car. In Scac.

Privilege of the King's Palace, &c. Vide 6 Mod. 73 to 76. 1 Mod. 76. 1 Sid. 211. 1 Lev. 106. 1 Vent. 169. 2 Mod. 181. 3 Inst. 141. Pryn's 4 Inst. 18, 19. Philipp's Regale Necessarium, Chap. 1. & 3. 1 Hawk. Cap. 21.

Prohibition and Consultation.

Hob. 300,
301.
3 Bull. 51.Shotter *versus* Friend. Hill. 1 W. & M. B. R. Rot. 39.S. C. 1 Show.
158, 172.
Vide Raym.
88, 666.

123, 189, 191, 219.

Cro. El.

AN Executor being sued for a Legacy in the Spiritual Court, pleaded Payment, and offered to prove it by one Witness, which the Judge refused, and gave Sentence against him. Upon this Matter suggested, a Prohibition was moved for. Et per Cur. 1st, Where the Ecclesiastical Court proceed in a Matter merely Spiritual, if they proceed in their own Manner, tho' that is different from the Common Law, no Prohibition lies; as in Probate of Wills; there, if they refuse one Witness, no Prohibition lies. Noy. 12. 2 Ro. 300. 2dly, Where they have Conuzance of the original Matter, and an Incident happens which is of temporal Conuzance, or triable by the Common Law, they shall try the Incident, but must try it as the Common Law would: Thus in a Suit for Tithes or for a Legacy, if the Defendant pleads a Release or Payment, or in a Suit to prove a Will, if the Defendant plead a Revocation. 1 Ro. Rep. 12. 2 Ro. Rep. 42. Yelv. 92. So in the Case at Bar, they shall try the Matter of Payment or no Payment, but then they must admit such Proof as the Common Law would, or otherwise they reject the Cause themselves, and ought to be prohibited. 3dly, A bare Suggestion, That the Defendant has but one Witness, and that they take Exceptions to his Credit and Reputation, is no Cause of Prohibition; for if they admit the Proof of one Witness, whether he be a credible Witness, or not, they shall judge, and the Party has no Remedy but by Appeal. 4thly, That it is not too late to come for a Prohibition after Sentence; for the Sentence in this Case is the Grievance. Consultation denied.

(1)
Prohibition
to a Suit for
a Legacy, for
refusing Proof
of Payment
by one Wit-
ness.
Larch. 117.
Moor Cal.
568.
Otherwise in
Probate of
Wills.

Temporal
Incident
must be tried
according to
Rule of the
Common
Law.
Vide post pl.
11.

Inter Starky and the Churchwardens of Watlington in
Suffex. Trin. 4 W. & M. B. R.

SUIT in the Spiritual Court for taking away two Bells out
of the Steeple, and a Prohibition was granted; for the
Churchwarden is a Corporation, and the Property is in him,
and he may bring Trover at Common Law.

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C

Whar-

(2)
Prohibition
to stay a Suit
in the Spi-
ritual Court for
taking Bells.

See 6 Mod.
11, 12, 25. &
79, 424, 131.

Wharton *versus* Pits. Trin. 4 W. & M. B. R.
1 Salk. 34, 35.

(3)
Prohibition
to the Ad-
miralty de-
nied, unless
the Defendant
would appear
and give Bail.
1 Vent. 146,
343.
Raym. 3. 3 Mod. 244. Post 553.

A Suit was in the Admiralty against the Master and Ship which lay in the Thames, for heedlessly running over another Ship, and the Defendant there moved for a Prohibition: The Plaintiff informed the Court, that the Defendant would not appear, so that he could have no Remedy at Law, upon which the Court refused a Prohibition, unless the Defendant would appear and give Bail.

Harris *versus* Hicks. Hill. 4 & 5 W. & M. B. R.

(4)
Prohibition
granted con-
cerning Mar-
riage and bas-
tardizing issue.
1 Salk. 100
to 103.
3 Lev. 410.
Lutw. 1059,
1075.

PROHIBITION was moved for to the Ecclesiastical Court of Coventry, where a Suit was against the Plaintiff for Incest, in marrying his first Wife's Sister, suggesting that the said second Wife was dead, and by his said Wife he had a Son, to whom an Estate was descended as Heir to his Mother, and that notwithstanding that he had pleaded this Matter, they went on to annul the Marriage and bastardize the issue. Et per Cur. A Prohibition shall go as to annulling the Marriage or bastardizing the issue, but they may proceed to punish the Incest.

Lutw. 1037,
1043, 1053.

Hawkin's Case. Hill. 8 Will. III. B. R.

(5)
Prohibition
to a Suit for
calling H.
Knave.
Vide Far. 31.
Post 692,
693.
2 Lev. 49, 63,
66,
3 Lev. 17,
119, 137, 350.

H. libelled in the Spiritual Court for calling him a Knave, a Knave, and a Knave indeed; and a Prohibition was granted, because nothing was said that could make him liable to Ecclesiastical Censure. The Statute de circumspice agatis mentions only such Defamations as are punishable in the Spiritual Court; and for such as the Spiritual Court cannot punish, the Party shall not be liable there: The Reason why the laying violent hands upon a Clergyman was there liable, was, because the Clerk having habitum & tonsuram, which made him known, 'twas an Affront to the whole Order.

(6)
Prohibition
may be grant-
ed after Sen-
tence where
Cause is not
of spiritual
Censure; or
otherwise for
citing out of
the Diocese.
Vide Forell.
137, 148.

Gardner *versus* Booth. Trin. 10 Will. III. B. R.

WHERE it doth appear in the Libel, or by the Proceedings in the Cause, that the Continuance of the Cause does not belong to the Spiritual Court, a Prohibition may be moved for and granted after Sentence; and this holds in all Cases but where one is sued out of his Diocese; for there, if he doth not take Advantage of it before Sentence, he shall not have

a Prohibition after Sentence; ratio est, because the Cause doth belong to the Spiritual Court; and tho' it doth not belong to that Spiritual Court, it belongs to some other, and not to the King's Temporal Court.

For Prohibitions after Sentence,
Vide Farell.
137, 148.
Winch. 8.
230.

1 Show. 158, 172. 6 Mod. 252. 1 Sid. 65, 632. N. B. 2 Lev. 230.

Bishop of St. David's Case. Pasch. 11 Will. III. B. R. (1)
Vide *this Case*, Title Bishops, Archbishops, &c.
Part 1. pag. 134.

Godfrey versus Llewelin. Trin. 11 Will. III. B. R.

WHERE the Matter suggested for a Prohibition appears upon the Face of the Libel, we never insist upon an Affidavit; but unless it appear upon the Face of the Libel, or if you move for a Prohibition as to more than appears on the Face of the Libel to be out of their Jurisdiction, you ought to have Affidavit of the Truth of your Suggestion. Per Holt C. J. & postea Trin. 12 W. 3. B. R. Vide 2 Co. 45.

(8)
Where Matter of the Suggestion does not appear on Libel, Affidavit is necessary.
Hob. 79.
Ante 461.
1 Lev. 253.

Machin versus Maultin. Mich. 11 Will. III. B. R.

IN a Declaration in Attachment for Prohibition, the Case was, That the Plaintiff lived in Nottingham within the Province of York, and there subtracted Tithes, and then removed into Lincolnshire within the Province of Canterbury: Afterwards he happened to go to York, and was sued there in the Court of the Archbishop, for the Subtraction aforesaid, and had a Prohibition on 32 H. 8. c. 9. for citing him out of his Diocese. But at last, after Debate, a Consultation was awarded; for that the Subtraction of Tithes is local, and must be sued before the Ordinary of that Place where the Wrong was done; otherwise in Cases transitory, ubi forum sequitur reum: And as it was argued by the Counsel, this is not citing out of his Diocese within the Statute, because the Diocese where he lives has not a Jurisdiction; and if he might not be cited in this Case, the Thing would be remediless and unpunishable. Vide Godb. 191. 1 Ro. Rep. 328. 1 Cro. 97. 13 Co. 4. Winch. 370. 2 Ro. Rep. 448. 3 Mod. 211. 2 Brownl. 12, 28.

(9)
H. subtracts Tithes in one Diocese and removes into another. Afterwards being found in the first, is there cited and sued, and a Consultation awarded. Subtraction of Tithes local.
Raym. 95.
Lutw. 1043,
1057, 1062,
1071.

Jones *versus* Stone. Trin. 12 Will. III. B. R.

(10)
Suit in the
Ecclesiastical
Court against
the Vicar of
S. for not per-
forming Di-
vine Service
in the Chapel
of C. as bound
by Custom,
Prohibition
denied.

DAVID JONES, the Vicar of N. was libelled against in the Spiritual Court, for that by Custom Time out of Mind, the Vicars of S. had by themselves, or others, said and performed Divine Service in the Chapel of Chawbury, for which there was such a Recompence; and that he neglected. The Defendant came for a Prohibition, and without traversing this Custom, suggested that all Customs were triable at Common Law: And M. Harcourt urged, That it was enough for a Prohibition, that a Custom appeared to charge the Vicar with a Duty for which he was not liable of common Right. Et per Holt C. J. A Parson may be bound to an Ecclesiastical Duty by Custom, and when he is bound by Custom, the Spiritual Court may punish him if he neglects that Duty; the Custom might have a reasonable Commencement by Composition in the Spiritual Court, and begin by an Ecclesiastical Act: And a bare Prescription only is not a sufficient Ground for a Prohibition, unless it concerns a Layman; whereas here it is an Ecclesiastical Right, an Ecclesiastical Person and an Ecclesiastical Duty, and the Prescription not denied; notwithstanding 2 Inst. 491. I never could get a Prohibition to stay a Suit in the Spiritual Court against a Parson for a Pension by Prescription. Vide 1 Vent. 3, 120, 265.

Sir Basil Firebrass's Case.

(11)
Prohibition
granted to a
Suit in Equity
for discovery
of Matters to
make the De-
fendant for-
feit his Free-
hold.
4 Leon. Cas.
261.
Vide ante pl.

HENRY chief Ranger of Enfield-Chase, and now a Bill was exhibited against him in the Chancery of the Dutchy, for a Discovery of what Deer he had killed, and what Timber, Wood, &c. he had felled and cut down, and by what Warrant, and to shew Cause why his Patent should not be repeated. And to this Suit a Prohibition was granted nisi; for he shall not be obliged to answer upon his Oath, what is to make him forfeit his Place, but it ought to be proved against him.

Earle *versus* Paine. Mich. 12 Will. III. B. R.

(12)
Trespas in
B. R. for ta-
king Wines
staid by Or-
der of Exche-
quer, an In-
formation of
Seizure de-
pending
there.

PAINE, a Custom-house Officer exhibited an Information of Seizure of a Hogthead of Wine belonging to M^r. Earle, and seized for not paying Custom. Earle neglected to come in and enter his Claim in the Exchequer, but in the mean Time brought Trespas in B. R. against Paine. Upon Motion the Barons ordered the Proceedings in the King's Bench should be stay-
ed,

ed, and the Cause there removed into the Exchequer in the same State and Forwardness: Earle was served with the Order, but notwithstanding gave Rules for pleading, whereupon an Attachment was issued by the Exchequer against him; whereupon he moved here for a Prohibition to the Court of Exchequer. And a Rule was made to hear Counsel; on the Argument several Precedents were cited, one in 19 H. 7. Rot. 16. exactly like this. The Court took Time to consider of the Precedents, and in the mean Time the Matter was compounded. Vide Reg. 187. 2 Inst. 551.

Exchequer
Privilege,
Vid. ante 546.

Anonymus. Hill. 12 Will. III. B. R.

IN the Bishop of Winchester's Case, 2 Co. 45. It is held, That in a Suit for Tithes in the Spiritual Court, H. may have a Prohibition, suggesting a Prescription or Modus, before or without pleading. But this seems not to be Law, for 12 W. 3. B. R. a Prohibition was moved for, suggesting a Custom, &c. Et per Holt. C. J. and the Court it was denied, unless they pleaded it below, because perhaps they might admit the Plea. Also 10 W. 3. B. R. it was said by Holt C. J. That if a Modus be pleaded in the Spiritual Court and admitted, no Prohibition shall go; but if the Question be, whether a Modus or no Modus, a Prohibition shall go, and so is the Law, viz. Wherever the Matter which you suggest for a Prohibition is foreign to the Libel, you must plead it below, before you can have a Prohibition; otherwise where the Cause of Prohibition appears on the Face of the Libel.

(13)
Prohibition
shall not go
for a Modus
or other fo-
reign Mat-
ter, unless
it be pleaded
below.
Post. 656, 657.

Jacob *versus* Dallow. Pasch. 1 Ann. B. R.

THE Plaintiff declared in a Prohibition, setting forth a prescriptive Right in the Plaintiff and those whose Estate he had, &c. to a Seat in the Church, and that the Defendant surmising a Usage Time out of Mind, had libelled against him in the Spiritual Court, for disturbing him in sitting there; and shews that he had denied the Usage in the Spiritual Court, and the Judge had refused to allow his Plea: The Defendant traversed the Plaintiff's Prescription and pleaded his own Usage, upon which there was a Demurrer: Mr. Eyre urged, That tho' the Plaintiff had by his Demurrer confessed his Prescription to be false, and by Consequence that he had no Right to the Seat; yet the Defendant grounding his Libel below upon a Custom which is not triable there, he could not have a Consultation. Vide Heel. 94. Noy 78. 2 Jo. 3. Holt C. J. held, That if the Plaintiff had not a Title by Prescription, he ought not to dis-

S. S. Farell. 8.
6 Mod. 230.
5 Mod. 436.

(14)
H. having a
prescriptive
Right to a
Seat in a
Church, and
being dis-
turbed, may
sue in the
Spiritual
Court to have
his Possession
quieted.
Vid. Lutw.
1032.

sturb

such the Possession of the Defendant; and the Ordinary hath Consuance of such Disturbance, and may settle it according to Usage and Possession, unless there be a temporal prescriptive Title hurt by their Sentence; and the Defendant might well sue in the Ecclesiastical Court to have his Possession quieted, and might admit his Prescription to be tried there, as a Defendant does a Modus or a Pension by Prescription.

S. C. Farell.
78, 79, &c.

Galizard *versus* Rigault. Mich. 1 Ann. B. R.

(15)
Prohibition
to a Suit a-
gainst H. for
Solicitation
of Chastity;
H. having
been con-
victed on In-
dictment for
Assault with
Intent to ra-
vish.

Palm. 379.
Post. 692, 693.

INDICTMENT was for assaulting, beating, wounding, and endeavouring to ravish the Wife of B. upon which the Party was convicted, and afterwards the Husband brought an Action of Trespass for the same Cause; and now the Party being also libelled against in the Spiritual Court for the same Fact, viz. for soliciting her Chastity, moved for a Prohibition to the Proceedings in the Spiritual Court; and it was urged for the Jurisdiction of the Spiritual Court, That they may punish for the Solicitation and Incontinence, and that this Suit was pro salute animæ, the other for Fine and Damages. Sed per Cur, a Prohibition was granted; for it being an Attempt and Solicitation to Incontinence, coupled with Force and Violence, it does by reason of the Force, which is temporal, become a temporal Crime in toto; as if one say, Thou art a Whore and a Thief, or Thou keepest a Bawdy-house, which are temporal Matters, the Party shall not proceed in the Spiritual Court; whereas, if it were only, Thou art a Whore, a Libel lies in the Spiritual Court. So if it be said of a Woman that she is a Bawd only, and not that she keeps a Bawdy-house. But per Holt C. J. If one commit Adultery, and the Husband bring Assault and Battery, this shall not hinder the Spiritual Court, for 'tis a criminal Proceeding there, and no Indictment lies at Common Law for Adultery. 1 Roll. Abr. 295. 2 Inst. 488.

Partridge's Case. Mich. 1 Ann. B. R.

(16)
Prohibition
to Probate
of Will of
Lands and
Goods, upon
Suggestion
of Non Com-
pos, denied.

A Prohibition was pray'd to the Spiritual Court to stay the Probate of a Will, which contained a Devise of Lands and several Legacies, suggesting this Matter, and that the Testator was Non compos; and the Marquess of Winchester's Case, 6 Co. 23. was relied upon: But the Court denied that Case, and said, That the Stat. of H. 8. never intended to lessen the Jurisdiction of the Ecclesiastical Court as to the Probate of Wills. And to grant a Prohibition might be inconvenient, for without Probate the Executor cannot sue for Debts, which by this

Means

Means may be lost, and the Will unperformed. As for granting it quoad the Land, it would be vain (Vide 2 Ro. 316. 1 Sid. 141. this was the Practice heretofore) because it is no Evidence either pro or con in any Court of Law, but a Proceeding coram non iudice; yet it is good as to the Goods.

Matthews versus Burdett. Hill. 1 Ann. B. R. Vide *this Case, Title Universities and Schools.*

Chambers versus Sir John Jennings. Hill. 1 Ann. B. R. S. C. Facell. 125.

A Suit by Libel was in the Court of Honour for these Words; viz. You a Knight? You a pitiful inconsiderable Fellow. And a Rule was made to shew Cause why there should not be a Prohibition: Against which it was urged, That there would be no Remedy in this Case, if this was not allowed: Holt C. J. doubted whether there was or could be any such Court, but said a Prohibition would lie to a pretended Court; and after no one present could be found of such a Suit for Words in the Court of Honour, the Prohibition went absolutely.

(18)
Prohibition to the Court of Honour.
Vide Law. 1053, 1054.
Parliament Cases, 58, to 67.
1 Show. 355.
1 Lev. 230.
4 Mod. 128.
1 Sid. 353.

Anonymus. Hill. 2 Ann. B. R.

PROHIBITION lies for denying a Copy of the Libel to any Ecclesiastical Court; Nam jura Ecclesiastica sunt limitata; and the Party ought to know whether the Matter be within their Jurisdiction, and how to answer. 1 Ro. Rep. 337. Dighton's Case. Et Mich. 2 Ann. B. R. 'Twas said by Holt C. J. That it was formerly held by all the Judges of England, that when there was a Proceeding ex officio in the Ecclesiastical Court, they were not bound to give the Party a Copy of the Articles; but the Law is otherwise: For in such Case, if they refuse to give a Copy of the Articles, a Prohibition shall go quousque it be given; and accordingly a Prohibition was granted per Cur'. Nota taken Pasch. 11 W. 3. B. R. Hall moved for a Prohibition to the Admiralty for refusing a Copy of the Libel; and it was denied per Holt C. J. Quia n'est deins le Stat.

(19)
Prohibition lies to the Spiritual Court in any Suit for denying a Copy of the Libel, but not to Admiralty. See 6 Mod. 156.
Hob. 79, 113.
3 Bulst. 51.
Ante 548.
Pl. 3.

Vide 6 Mod.
261.
Post. 656.

Foy *versus* Lister. Trin. 4 Ann. B. R.

(20)
Suggestion in
Case of
Tithes must
be prov'd
within six
Calendar
Months from
Tithes of
Prohibition.
Cro. Car. 298.
Stir. 2. E. 6.
c. 13. §. 14.

On a Modus suggested to pay every tenth Days Milk, from April to November, skimmed and then made into Cheese, in lieu of all Tithes of Milk, a Prohibition was granted to try the Modus, and settle the Matter, and upon speaking to the Goodness of the Modus, these Cases were cited. 3 Cro. 609. Mod. 909. Litch 226. 1 Ro. 649. N. 17. 648, 649. At last Mr. Eyre came and shewed, That the Prohibition was tested the 29th Day of November, and that six Months, i. e. Calendar Months (as they ought to be. Noy 30. Hob. 179. Litt. Rep. 19.) were expired the 25th Day of May last, and therefore he moved for a Consultation, because in all that Time they had not proved their Suggestion; and had it upon the Statute c. E. 6. And the Court agreed, That the Statute extends to Suits for small as well as great Tithes, and that the six Months are to be computed from the Tithes of the Writ; and the Case in Moore 573. wherein it is said there must be six Months in Term-time, was denied. For proving Suggestions, Vide Co. Ent. 462, 463, 4. Consultations for not proving them, Vide Ashc. 444. Thel. Brev. 80. Note, The Entry in Ashton is ill in the Award of the Costs for there ought to be a Judgment. Yelv. 119. 1 Brownl. 98.

PROOF.

Y P R O O F.

Vide Tit. E.
vidence and
Witnesses.
1 Silk. 278,
281, 286.
Post 691.
Farell. 129.

Bredon *versus* Gill. Mich. 8 Will. III. B. R.

ON an Appeal from the Commissioners of Excise to the Commissioners of Appeals, according to 12 Car. 2. the Question was, Whether the Depositions of the Witnesses and their Examination written down by the Clerk of the Commissioners of Excise, should be allowed to be read in Evidence on this Appeal? Or whether the Witnesses should not be brought in again personally, and be examined viva voce? The Commissioners of Appeals thought the Depositions sufficient, and moved thereupon, and a Prohibition was moved for, but denied at first, because this had been the Course ever since the Statute, and it was a summary Proceeding: That it would occasion Trouble and Delay to the Revenue to bring in all the Witnesses again; and it was but proper the Commissioners of Appeals should have just the same Evidence the first Commissioners had: So it is in an Attaint, and the Law does not make viva voce Evidence necessary, unless before a Jury. In other Cases Depositions may be Evidence: If it were not so in this Case, they would be to try the Matter de novo, instead of trying an Appeal. Sed postea Palch. 9 W. 3. B. R. mutata opinione, the Court held that the Commissioners of Appeal ought to examine the Witnesses de novo on the Appeal, that it was the Intent of the Act, and the Commissioners had a Power given for that Purpose, to administer Oaths: That this was just, because the first Sentence might be by Default, or the Depositions might misrepresent, or not represent the whole Case; and that on Appeals upon Orders of Justices, Examination is always de novo. And a Prohibition was granted; but Holt C. J. laid, his private Opinion was, That if the Witnesses were dead, they might use their Depositions.

Vide Farell. 129. The Transfer-Books of the East-India Company allow'd as Evidence, &c.

Vide 7 Co.
17. b.
Krlw. 39.
4 Leon. Caf.
361.
2 Leon. 36.
11 Co. 82.

PROPERTY.

Sutton *versus* Moody. Mich. 9 Will. III. B. R.

H. has the
Property of
Things fera
Naturæ, kill'd
in his own
Ground.
Vide 11 Co.
17. b.
Egpost 637.
667.
Cro. Car. 553.

THE Plaintiff brought Trespass for breaking his Close and hunting there, & Centum cuniculos suos adtunc & ibidem inveni. occidit, cepit & asportavit; Verdict was for the Plaintiff, and entire Damages: And it was objected in Arreſt of Judgment, That H. cannot have a Property in Conies which are fera natura, unless on a special Account; as if he has a Warren of them, then he may lay Quare Warrennam suam fregit & cuniculos suos cepit. Vide 1 Cro. 553. F. N. B. 87. Reg. 93. b. & Brownl. 167. Curia contra; for a Warren is but a Franchise to keep them; and notwithstanding that, the Owner has no more Property in the Conies themselves than any Man that has them in his own Land; if H. hunts a hare in my Close, and kills her there, 'tis my hare; otherwise if he hunts her into the Ground of a third Person, then 'tis the Hunter's. Judgment pro Quer.

2

Quan-

Quantum Meruit.

See 1 Silk.
336.
Post 597.

Snow *versus* Firebrass. Mich. 12 Will. III. B. R. Ante 439.

THE Plaintiff declared, That the Defendant in Consideration that the Plaintiff had found him sufficient Meat, Drink, Washing and Lodging, pro diversis mensibus ultimo præteritis, promised to pay him as much as he should deserve, and avered that he deserved so much: Upon Non Assumpsit pleaded, and Verdict for the Plaintiff, it was moved in Arrest of Judgment, that the Declaration was short and incertain as to the Time or Number of Months: Sed per Holt C. J. The Incertainty as to the Length of Time, or Number of Months, can do no more harm than Incertainty as to the Things, which has been often adjudged not to vitiate. It is enough to aver how much he deserved. Judgment pro quer.

(1)
Quantum meruit for Meat, Drink, &c. uncertain as to Time, well.

See 1 Show.
342.

Glover *versus* Rogers, Pasch. 4 Ann. B. R.

PLAINTIFF declared that the Defendant, in Consideration that the Plaintiff's Testator had transported for him such and such Merchandizes, promised to pay the Plaintiff's Testator, tantas denar. summas pro transportatione Merchandiz. prædict. rationabiliter habere meruisset, and avers that he deserved so much. Upon Non Assumpsit, Verdict was for the Plaintiff, and Judgment in C. B. and now a Writ of Error was brought thereupon in B. R. and objected that the Word Quantum was wanting, and it is not said who had deserved, and he avers he deserved so much for Transportation of Merchandizes. But the Court affirmed the Judgment: Tantum is enough, viz. The Defendant promised him to pay him so much he deserved; and meruisset signifies as much as ipse meruisset, and there being but two Persons in the Record it could be no Body but the Transporter, and they must have been the same Merchandize for which the Promise was made, or otherwise the Plaintiff could not have had a Verdict, which has cured the Want of Prædict.

(2)
Quantum omitted, but held well.

Vide Farell.
106.

Moverley *versus* Ley. Hill. 4 Ann. B. R.

(3)
To be taken
according to
the Intent of
the Parties.

ASSUMPSIT, and declares quod cum the Defendant, in Consideration that the Plaintiff would provide him Meat and Drink, promised to pay him as much as the Plaintiff habere meruit, and avers that he deserved so much: There were also other Counts. Non Assumpsit was pleaded, and Verdict for the Plaintiff, and intire Damages: Upon Motion in Arrest of Judgment it was objected, that meruit should have been meruerit. The Court held at first, That this was not false Latin, but false Sense, which is not cured by a Verdict, and tho' a Dash would help it, yet they could not by Intendment supply a Dash, for that was to make another Word. This was moved several Times, and having rested two Terms, the Court gave Judgment for the Plaintiff, saying, they must take the Words of the Declaration to be the very Words of the Promise; as if the Words of the Promise had been put in writing thus, by the Parties under their hands, in which Case the Court ought not to pursue a grammatical Sense or Construction, which makes the Promise void; but to construe it so as to make the Parties mean somewhat, as it's plain they did, and that was to pay tantum, quantum habere meruerit.

Farell. 106.

Quare

4

Quare Impedit.

[*Vide Title Presentation.*]

Berkeley *versus* Hanford. Mich. 3 W. & M. B. R.
Rot. 569.

In a Quare Impedit against A. and B. and the Bishop. A. and B. made Title, and the Bishop pleaded that he claimed nothing but as Ordinary. The Bishop died. A. came and surmised this upon the Roll, and prayed the Plaintiff might reply; upon this an Entry was made, Quod prædict. quer. licet solemniter exactus non venit, nec est prosecutus breve suum præd. ideo consideratum est, &c. & breve Episcopo. Upon this a Writ of Error was brought, and the Judgment was affirmed; for it is a Nonsuit after Appearance, which in a Quare Impedit is peremptory. Vide 7 Co. 27. b. 2 H. 4. 1. b. 14 H. 7. 19. b.

Vide 1 Salk.
43. 44.
Lutw. 1084,
to 1130.

(1)
In Quare Impedit Non-suit after Appearance is peremptory.

Dominus Rex & Domina Regina *versus* the Bishop of London and Dr. Lancaster. Trin. 5 W. & M. B. R.

S. C. 3 Lev.
377, & 382.
4 Mod. 200,
Parliament
Cases 164.

In the great Case of the Quare Impedit for the Church of St. Martins in the Fields, the Defendant pray'd Oyer of the Writ, and pleaded in Abatement Variance between the Writ and the Count; the first being Quæ ad nostram donationem spectat, the later Quæ ad suam donationem spectat jure Prærogativæ. And on Demurrer it was objected, that the Title by the Writ is a Title in Fee, this in the Count is only a Turn pro hac vice; sed non allocatur; for the Precedents are so, and the Writ is always general. Shower pro def'. Suppose then the King should have Judgment by Default and a Writ to the Bishop, would this gain a general Title to the Crown and become a Usurpation? Holt C. J. No; for where the King hath Judgment by Default in a Quare Impedit, he as well as a Subject, must by Suggestion on the Roll set forth his special Title. Respondeas ouster awarded.

(2)
In Case of a Prærogative Turn the Writ is general, quæ ad nostram spectat donationem.

Dominus

Dominus Rex versus The Bishop of Chester, Pierce and Cook. Hill. 9 Will. III. B. R.

(3.)
King's Grant
of an Ad-
vowson.
Vide Hob.
143.
3 Co. 4, 5.
10 Co. 101.
Owen 43.
1 Leon. 21,
201, 277.
6 Co. Dough-
ty's Case.

In a Quare Impedit the Plaintiff declared, That M. Elizabeth, on the 14th Day of February, in the 12 Year of her Reign, was seised of the Advowson of Bedel, ut de uno grosso, and presented Syms: That the Queen died, and it descended to R. James, and he was seised ut de grosso: So to R. Charles, and that he was seised ut de grosso, and presented Wickham, and that afterwards Wickham died, and one J. Peirce non habens jus sed usurpando presentavit Metcalfe: That R. Charles I. died seised, and it descended to R. Charles II. &c.

Defendant pleads that R. Charles I. was seised in gross; but that he after his Presentation of Wickham, by Letters Patents granted the Advowson aforesaid to one Thackston, adunc Armigero, postea Militi.

Et quod prædicto tempore quo Peirce is supposed to have usurped super Dominum Regem, ipse idem Peirce usurpavit super dict. W. Thackston, and presented Metcalf. Et quod postea the said Thackston released the Advowson and his Right therein, to him the said J. Peirce and his heirs, and traverses the dying seised of R. Charles I.

The Attorney-General prayed Oyer of the Letters Patent, which, reciting that M. Elizabeth, in the 13th Year of her Reign, granted the Manor of Bedel with the Advowson adinde spectan. to the Earl of Warwick, and that the said Manor was come to Sir W. Thackston Knight, Sciatis igitur nos dedisse & concessisse præfato Will'o Thackston mil. advocationem Ecclesie prædictæ, and thereupon demurred to the Plea. Judgment was given in C. B. for the King, and a Writ of Error brought; and thereupon it was objected, That the Advowson which the King meant to pass, was an Advowson which M. Elizabeth granted to the Earl of Warwick, and that the said Grant to the Earl of Warwick was void; for the Queen, Anno 12 Regni sui, being seised of this Advowson ut de grosso, could not Anno 13. grant this as an Advowson appendant, and that this is admitted by the Defendant: And if this was an Advowson in gross, and so descended to Charles I. his Confirmation or Grant to Thackston upon a Supposal wherein he was deceived, will be void; and that the said W. Thackston in the Letters Patent, and the W. Thackston in the Grant, appear to be different Persons: On the other Side it was urged, That the Queen might be seised of this Advowson as in gross at the Time she presented, and at the Time she died, and yet might be seised of it as appendant when she granted it to the Earl of Warwick, so she might have the Advowson again after the

the Grant to the Earl of Warwick, and then present; and that the Court ought to intend every Thing to make the King's Grant good. To clear this the Chief Justice, Rokeby and Eyre Justices held.

1st, That the Time of the Grant laid in the Court was immaterially alleged; for 'tis sufficient to say, tempore pacis, tempore Domine Regine, and therefore 'tis not traversable: In Trespas quare, &c. it is necessary to lay a certain Time; yet even there the precise Time is not material nor traversable, but any Time before the suing of the Writ may be given in Evidence; a fortiori here, &c.

2dly, That which is not material nor traversable is not admitted nor confessed when it is alleged, and not traversed: Ergo, as the Plaintiff upon non present. modo & forma, might give in Evidence a Presentation any Time, so the Court may intend it. Vide 1 Inst. 352. Hob. 71. 2 Leon. 99.

3dly, The Grant of the Queen, as recited, is said to be inter alia, so there may be other Words which are sufficient to pass an Abbotson in gross to the Earl, and the Intent of H. Charles I. is plain, and this Consideration might be sufficient; as the Relinquishing of a Suit against the King, or the Surrender of a void Patent is a good Consideration for a new Grant: And as to the Recitals, which were not all answered, Holt C. J. said, Where it appears by the Recitals, the King intended not to pass any Thing he had an apparent Right in, but only what was concealed, the Recital will qualify the Grant; which is Legat's Case, 10 Co. But where there are Words in the Grant, which shew the King designed to pass the Land, tho' they were not concealed, there the Grant shall be good to pass the Land. Hard. 231.

4thly, Holt C. J. Turton and Eyre Justices held, That William Thackston Esq; in the Plea, could not be W. Thackston Knt. mentioned in the Letters Patent, for Esquire is drowned in the Name of Knight; so that a Knight cannot be an Esquire; and a Grant to A. B. Knt. is absolutely void, if A. B. be only an Esquire. Knight is a Name of Dignity and parcel of a Man's Name, as much as his Christian-Name. It was said that it should have been averred, That W. Thackston was revera an Esq; but cognit. & reputat. Miles, at the Time of the Grant; but that would not have aided it, for a Man cannot be a Knight by Reputation, for there can be no Foundation for such a Reputation; and it is not the Party's saying in his Plea, I am the Man, that will explain the Grant, but the Identity must appear on the face of the Grant it self. Upon this the Judgment was affirm'd by Holt C. J. Turton and Eyre Justices: but Rokeby J. held that here was a sufficient Demonstratio personæ, and that it ought to have been reversed.

Sufficient to lay Scilicet tempore pacis, tempore Domini Regine.

That which is immaterial is not admitted by not being traversed.

In Grants where the King's Intent appears to pass the Thing, it shall pass notwithstanding false Recitals. Vide Hob. 143, 229, 230. 3 Co. 45. 5 Co. 93. 3 Lev. 49.

Grant to a Knight by the Name of Esquire, is void. See 1 Inst. 668. 16 H. 6. 23. 18 H. 6. 8. 6 Co. 27. Litt. R. 81. Hard. 198. 1 Sid. 40. Farell. 38.

QUE ESTATE.

See Co. Litt.

303.

3 Lev. 19.

1 Lev. 190.

1 Salk. 363.

1 Mod. 231.

See 5 Mod.

150.

Post. 639.

1 Lev. 190.

1 Sid. 298.

2 Sid. 18.

Commence-

ment of par-

ticular Estate

must be

shewn.

1 Mod. 231.

2 Mod. 112.

144.

1 Show. Cal.

436.

Lutw. 80, 81.

Diversity be-
tween Counts
and Avow-
ries.

Scilly *versus* Dally. Pasch. 10 Will. III. B. R.

Intr. Hill. 9 Will. III. B. R. Rot. 747.

In Replevin, the Defendant avow'd and set forth that J. S. was possessed of a Messuage and 40 Acres of Land setting out the Time of the Commencement of the Lease, and demised, rendering Rent, &c. And that he being possessed of the Reversion died, and it came to his Executor, and for Rent arrears he avow'd. The Plaintiff demurr'd, and shew'd for Cause that the Avowant had not shewn who was Lessor of J. S. And for this it was held naught. Per Holt C. J. In Debt for Rent it is enough to say demise; And if it be brought against an Assignee, that he demised to such a one, whose Estate the Defendant hath, is enough for the Lessor or his Executor, (Quere taken of the Ver) without making a good Title to himself; yet an Avowry differs from a Declaration in many respects. In a Declaration in Debt for Rent, Nil debet is a good Plea, and traverses the whole Declaration; but there can be no general Issue to an Avowry, but some special Point must be traversed; and therefore, because it does not appear out of what Estate, or in what manner this Term was devised, Judgment must be for the Plaintiff. Vide Cro. Car. 571. The Reason, why the Commencement of particular Estates must be shewn in pleading, is, because they are created by Agreement out of the primitive Estate; and the Court must judge whether the primitive Estate and Agreement be sufficient to produce the particular Estate claimed; and this is a fundamental Rule which ought not to be broken upon fancied Inconveniencies.

Re-

Recognizance, Statutes, Elegit, Extent, &c.

Vide Farel.
38, 97.
Hob. 196.
Cro. Car. 148.
Cro. Jac. 2,
12, 449, &c.

Hammond *versus* Wood. Trin. 3 W. & M. B. R.

Vide Cro.
Car. 141, 149.

THE Conusee of a Statute had Lands extended and delivered to him upon a Liberate: The Conusor being in Possession, continued his Possession; afterwards the extended Interest was assigned; and the Question was, Whether it was assignable? The Court held not: It was objected, That before Entry by the Conusee, this was like an Interest termini, or the Interest of one that has a Lease to commence at a future Day, which is assignable; so here the Conusee hath an Estate before Entry: Sed per Holt C. J. By Return of the Extent an Interest vested in the Conusee: The End of the Liberate is to have an actual Possession of the Interest; and it must be taken that he has by the Return of the Liberate; the Sheriff, returning thereupon liberari feci, the Conusee is estopped to say otherwise: If then the Conusor continues to keep Possession after this Return, the Conusee's Estate is turned to a Right, like the Case of Disseisor making continual Claim, as soon as ever the Disseisor leaves the Premises, the Continuance of Possession by the Disseisor, makes a fresh Disseisin. Vide 1 Inst. 156. Lit. 129. And this is not like the Case of Portgago, who continues in by Consent, and not in Opposition to the Portgagor.

(1)
Conusee can-
not assign his
Interest after
Extent and
Liberate, if
Conusor con-
tinues in Pos-
session.
Vide Farel.
38, 97.
Cro. Jac. 3,
12, 449.

Putten *versus* Purbeck. Trin. 12 Will. III. B. R.

Vide Cro. Jac.
12.

TD a Scire facias upon a Judgment, the Defendant pleaded in Bar, that the Plaintiff had before sued an Elegit on the same Judgment directed to the Sheriff, who thereupon returned an Inquisition taken, and a Delivery of such certain Parcels thereof. [Et nota; the Parcels amounted to more than a Moiety] and prayed Judgment, if the Plaintiff should have any other Execution; to which it was demurred; and the Court held that the Execution was merely void; for the Sheriff had only a circumscribed Authority and had exceeded it; and if the Plaintiff had brought

(2)
On Elegit, if
the Sheriff
deliver more
than a Moie-
ty, the Exe-
cution is
void.

an Ejectment, he could not have recovered the Possession on this Title, and therefore should be at Liberty to pursue a more effectual Execution.

Domina Regina versus Ewer. Pasch. 1 Ann. B. R.

(3)
Certiorari to remove an Indictment not a Superedeas, unless Recognizance entered into in 20 l.
Vide 1 Salk. 147, 148, 149.
Farell. 120, 121.

A Scire facias was brought on a Recognizance taken before a Judge upon granting a Certiorari to remove an Indictment from the Sessions of the Peace, which upon Oyer was entered in hæc verba; and was for 40 l. whereas the Sum prescribed by the Statute is 20 l. Et per Holt C. J. Before 5 & 6 W. & M. c. 11. any Judge might take a Recognizance, which is not taken away; but if it be not according to the Statute, which is in 20 l. the Certiorari will be no Superedeas; yet, whether it be or no, it is still good as a Recognizance at Common Law.

Vide post
664, 659.
6 Mod. 42.
2 Leon. 24.

Shuttle versus Wood. Mich. 2 Ann. B. R.

(4)
In C. B. if Recognizance be taken at a Judge's Chamber, it must be so declar'd on; but in B. R. as if taken in Court.
Vide Hob. 196.
March 159.

I Deb't on a Recognizance of Bail in C. B. the Plaintiff declared that the Defendant per scriptum suum obligatorium recognovit in curia dictæ Domine Regine de Banco coram Thoma Trevor Mil. & Sociis suis, &c. Defendant pleaded Nul tiel Record; the Recognizance certified, appeared to be taken before Mr. Justice Nevil, at his Chambers. Et per tot. Cur'. The Plaintiff hath failed of his Record, and hath varied in his Description from the Recognizance. Et per Holt C. J. If it had been entered as taken in Court, then it had been well enough: In this Court the Course is always to enter them as taken in Court, tho' taken actually by a Judge in his Chamber, and in this Court they are not taken in a Sum certain, as in C. B. neither are they a Record till entered; but in C. B. 'tis a Record immediately upon the first Caption, and binds the Lands before it be filed at Westminster, and when it is filed, then it is a Record in Court, and a Scire facias or Debt lies upon it, either in Middlesex where filed, or in London where taken; whereas on a Recognizance in this Court of B. R. the Action or Scire facias must always be brought in Middlesex.

Re-

RECORDS.

See a Sound.
254, 393.
6 Mod. 18,
243, 257.

Waites *versus* Briggs. Mich. 6 W. & M. B. R.

S. C. 5 Mod.
8, 9.
Vide 1 Sid.
429. 6 Mod. 103. Lutw. 332. 2 Salk. 298.

IN Debt for an Escape the Plaintiff declared the Prisoner was committed and escaped, and because he did not say prout patet per Recordum, the Defendant demurred generally; but the Plaintiff had Judgment; for the Gift of the Action was the Escape, and the Commitment only Inducement. Et per Holt C. J. In Debt on a Judgment quod cum recuperasset, is good without a prout patet per Recordum; and the Defendant may plead Nul tiel Record. Et per G. Eyre J. The Matter here is grounded on the Fact, for Nil debet is a good Plea, and not on the Matter of Record. And the Rule in Co. Lit. 303. where the Difference is taken between Cases, where the Record is the very Foundation, and where Inducement, is a good Diversity. Vide 1 Sid. 16. Judgment for the Plaintiff.

(1)
In Escape the Plaintiff did not alledge the Commitment prout patet per Recordum, but well on general Demurrer.
Vide 3 Lev. 311.
1 Lutw. 111.
See now the Stat. 4, 5 Ann. c. 16.

Dominus Rex *versus* North. Hill. 8 Will. III. B. R.

PER Holt C. J. It is an Error in the Clerks in London, that upon a Certiorari they return only a Transcript, as if the Record remained below; for in C. B. tho' they do not return the very individual Record, yet the Transcript is returned as if it were the Record, and so it is in Judgment of Law.

(2)
Upon a Certiorari the very Record is returned.
6 Mod. 188.

Thompson *versus* Leach. Pasch. 9 Will. III. B. R.

S. C. ante
427.
Post 576, 618,
675.

PER Holt C. J. You ought not to move to read a Word of a Record, in order to make a Consilium, where the Roll is of a precedent Term, unless it be filed; for you ought not to have a loose Roll, unless it be a Roll of that Term of which it ought to be a Record.

(3)
Roll of precedent Term ought to be filed.
Vide 3 Lev. 219.

Moor versus Manucaptor. Garrett. Mich. 10 Will. III. B.R.

(1.) Upon Nul tiel Record pleaded of a Record of the same Court, Day may be given to the Party to bring it in, or for the Justices to inspect the Record; but Defendant cannot demur. Vide; Lev. 242.

A Scire facias against Bail; the Defendant pleads, That no Capias issued forth against the Principal; the Plaintiff replied, and set out the Capias, prout patet per Recordum, &c. Defendant rejoins Nul tiel Record. Plaintiff surrejoins, habetur tale Recordum, and prayed that the Court will inspect the Roll, &c. The Defendant demurs, and the Court held this Demurrer was ill: Upon Nul tiel Record pleaded, where it is a Record of another Court, the other Party replies, quod habetur tale Recordum, and the Court gives him a Day to bring it in: But if H. pleads a Record of the same Court, the other Side may traverse Oyer, &c. or may plead Nul tiel Record, and then there are two Courses of Proceeding in such Case, for either the Court may give the Party a Day to produce the Record, which Entry is, Et dictum est prefato defendant, quod habeat Recordum hic tali die sub suo periculo, &c. or the Court may give Day to inspect the Record themselves. Et quia Justiciarii hic se advisare volunt super inspectione & examinatione Recordi per predict. Defendantem superius allegati dies datus est paribus predict. hic usq; &c. Vide Dy. 238.

But in the principal Case, what does the Defendant do by his Demurrer, but deny that the Court can inspect the Record in the Court before them? Which they may most undoubtedly; therefore Judgment must be given against him.

Anonymus. Trin. 11 Will. III. B. R.

(5) Printed Statute nor Evidence upon Nul tiel Record.

In an Action against H. Defendant pleaded the Composition Act; the Plaintiff replied Nul tiel Record; upon the Day given to bring in the Record, the Defendant brought in the printed Act. Et per Holt C. J. An Act printed by the King's Printers is always allowed good Evidence of the Act to a Jury; but was never allowed to be a Record yet: You must get an Exemplification under the Great Seal, and then plead it exemplified, and then no Man can deny it.

Turner versus Barnaby. Trin. 2 Ann. B. R.

(6) As of the Court upon Record may be altered the same Terms of the Party, not.

In Ejectment, the Defendant being called to confess Lease, Entry and Duster, made Default, and that Default was recorded. Afterwards the Plaintiff would have waived it, supposing the Record of it to be in the Breast of the Court during the Term.

Term. Et per Holt C. J. There is a Diversity between an Act of the Court done upon Record, for that is in the Breast of the Court, and may be altered by them during the Term; and an Act of the Party recorded by the Court, as a Nonsuit or Default, for that once recorded, cannot be altered by the Court; for that would be a Means of introducing Falsity in Matter of Fact into Records.

See Ray. 69.
3 Lev. 219.

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Common Recoveries.

Vide 1 Co.
14, 61.
2 Co. 74.
5 Co. 40.
Post. 597.

Sir John St. Alban's Case. Trin. 1 W. & M. C. B.

SIR John St. Albans being of the Age of nineteen Years, his Sister, who was the next in Remainder, and also his Wife, married one of his Footmen: he petitioned the King for Leave to suffer a Common Recovery, who referred it to the Judges of the Common Pleas, before whom several Precedents of Recoveries, suffered by Infants upon Party Seals, were cited, viz. One Bivarny, the 1st Day of June, 10 Car. 1. One Young the 23^d Day of November, 11 Car. 1. another 13 Car. 1. another 14 Car. 1. another 1 Jac. 2. another 4 Jac. 2. by Toby, another 4 Jac. 2. another by John Croke, Son of Sir John Croke, 10 Car. 2. The Judges observed that seven of the Petitions were by Fathers upon the Marriage of their Sons, and an equal Recompence given, whereas here was neither Father nor Marriage in the Case; and they said this Case had been carried too far already, therefore disallowed it. Vide Hob. 196. 1 Ro. 731. 1 Cro. 307.

(1)
Recovery
suffer'd by an
Infant.
1 Sid. 321.
1 Mod. 48.
2 Keb. 142.
Styl. 246.
Cro. El. 321.

Clithero

Clithero versus Franklin & Ux. Pasch. 2 W. & M. C. B.

Rot. 207.

(2)
To A. and
his Wife for
Life, Remain-
der to the
Heirs male of
A. on the
Wife be-
gotten; A. can-
not dock this
during the
Wife's Life.

In a Writ of Ayel the issue was, Whether the Grandfather died seised in Fee? The Jury found that the Grandfather co-venanted to stand seised to the Use of himself and Mary his Wife for their Lives, Remainder to the Heirs males of the Grandfather on the Body of the said Mary begotten, with Remainders over: The Grandfather suffered a Common Recovery and died: Mary survived. To prove the Recovery void, it was insisted, that Owen and Morgan's Case was not Law; for if Baron and Feme had an Intirety, then each had the Whole, and the Baron might make a Tenant to the Præcipe for the Whole. Pemberton contra, That Case was never yet questioned; the Wife's Estate binds the Intail from executing in the Baron; so that 'tis only a kind of contingent Estate after the Death of the Wife, and the Intail cannot be tacked to the Estate for Life of the Husband, during the Life of the Wife; because during her Life there is an intervening Estate; and accordingly adjudged. 3 Co. 6. Pl. Manklo's Case, 8, 9. 1 Cro. 380. 1 Sid. 83.

S. G. 1 Show.
347.

Lloyd versus Evelin. Pasch. 5 W. & M. B. R.

(3)
Tenant by
Fine, &c.
Vid. Noy 126.
1 Mod. 107;
262.

In a Writ of Error of a Common Recovery, the Tenant to the Præcipe in the Common Recovery was made by a Fine, the Recovery was suffered, and the Fine was reversed, yet it was held a good Recovery; for there was a Tenant to the Præcipe at the Time.

S. P. 1 Show.
347.
1 Mod. 218.

Lacy versus Williams. Trin. 11 Will. III. B. R.

(4)
If Tenant
gains the
Freehold at
any Time be-
fore Judg-
ment, good.
Vide Cro.
Jac. 455.
Lutw. 1549.

ERROR of a Judgment in C. B. in Ejectment, wherein a Special Verdict was found, viz. That a Writ of Entry was brought against Miles Corbet, Ret. Quindena Martini. That upon the Return Miles Corbet appeared, and the Demandant counted against him, That he vouched Lacy the Tenant in Tail, and a Summons ad Warrantizandum issued, returnable octabis purificationis. After the Teste and before the Return of the Writ of Summons, viz. the 1st Day of January, Lacy the Tenant in Tail, conveyed to Miles Corbet by Lease and Release for Life. At the Return of the Summons, Lacy the Tenant in Tail appeared and entered into the Warrant, and vouch'd over the Common Vouchee, and so a Common Recovery was had. This

Recovery being held good in C. B. Serjeant Pratt, for the Plaintiff in Error, insisted, That Miles Corbet was not Tenant to the Precipe at the Return of the Writ of Entry. He agreed that if he had purchased before the Return of the Writ of Entry, the Recovery had been good, (otherwise if after, as in this Case,) to bind Strangers or the Issue in Tail, tho' it might be good between the Parties by Way of Estoppel. Vide 1 Ro. 868. 21 E. 3. 5. 5 H. 6. 1. 18 E. 4. 26. 9 E. 4. 12. 3 H. 6. 34. Ratio est, because the Tenant could not render the Lands at the Return of the Writ of Entry, and a Voucher supposes a Seisin; for 'tis a good Counterplea that the Voucher had nothing in the Lands at the Time of the Voucher, and the nec unquam postea is not material; and if the Tenant pleads not Non-tenure as he ought and might, that only binds himself and those that are Parties and claim under him by Estoppel.

Kene contra argued, That the Issue shall be bound where he may have Execution for the Value. 3 Co. 5. 6. 12 E. 5. 19. And 'tis not a sufficient Counterplea of a Voucher to say, the Voucher had nothing tempore, &c. without adding nec unquam postea. Rast. 367, 126. So it is of Non-tenure, Rast. 273. Where the Tenant appears on the Return of the Writ of Entry, and a Recovery is then had, in such Case the Tenant must have the Freehold at the Return of the Writ, because 'tis a Recovery then suffered; but otherwise where there is a Voucher over, or Interpleader, as in this Case; for 'tis sufficient if he become Tenant before Judgment. 41 E. 3. 5. 8 E. 3. 32. 10 E. 3. 21.

Holt C. J. It is not enough in a Counterplea of a Voucher to say, the Voucher had nothing in the Lands at the Time of the Voucher, without nec unquam postea; so it is of Non-tenure: If the Tenant to the Precipe gains a Freehold before Judgment, 'tis sufficient, for it cannot be said to be a Recovery against him that had nothing; therefore a Writ may be made good by a subsequent Purchase, and so may a Voucher; and 'tis the more reasonable, because the Demandant may have a good Cause of Action, tho' the Tenant have not the Land; for 'tis not his being Tenant to the Precipe, but the Demandant's having a Right to the Land, that is the Foundation and Cause of Action; and therefore 'tis in Law sufficient, if the Tenant have the Land to render at any Time before Judgment. And the Judgment was affirmed Nisi causa. Afterwards Mr. Squib came to shew Cause why the Judgment should not be affirmed; and cited 18 E. 3. 13. 18 E. 4. 26. 2 Ro. 746. Sed non allocatur: And Holt C. J. said, The Recompence in the Case of Common Recoveries was ratio una, but non unica; for a Reversion expectant is barred by a Common Recovery, and yet the Recompence cannot extend to that; which he said was a bold Advance in Favour of Common Recoveries. This Rule was made absolute.

Non-tenure
cur'd by sub-
sequent Pur-
chase.
Q. 1 Mod. 218
1 Show. 347.
Lutw. 1549.
Post. 601.

Page *versus* Hayward. Trin. 3 Ann. B. R.

(6)

NICHOLAS SEARLE by his Will devised to his Niece Mary Bryant and the Heirs male of her Body, upon Condition and provided that she intermarry with and have Issue male by one surname Searle; and in Default of both Conditions he devised to Eliz. Bryant [in the same Manner] and in Default thereof he devised to George Searle for sixty Years, if he so long live, Remainder to the Heirs Males of the Body of the said George, and their Issue Male for ever. Mary and Elizabeth, with her husband, (for she had then married one Cliff,) joined in a Fine to make a Tenant to the Precipe, who was one Isaac Savery. Isaac Savery vouched Mary Bryant, Eliz. Cliff, and her husband, and the Wife of the Debtor with her husband, she being again married, and vouched them all jointly, and they vouched over the common Toucher. Et per Holt C. J. & tot Cur, it was adjudged,

To A. and the Heirs of her Body by one of the Name of Searle, is Tail. Vide Post. 619, &c.

Words sounding conditional, taken as limitation in a Will. Vid. 2 Co. 72, 73, 74, &c.

Condition that runs with the Land cannot be barr'd by Recovery, otherwise of Condition collateral.

1st, That the Estate devised to Mary was a good Estate-Tail, and so was the Estate to Elizabeth; but it is a Special Intail; 'tis an Estate to her and the Heirs Males of her Body begotten by a Searle, which is a middle Intail; not the highest nor the least; for it might have been to her and the Heirs of her Body begotten by J. Searle, which had been more particular; yet this is a good Estate-Tail within the Statute de donis, for it is within the Reason of the Statute.

2dly, The Words, upon Condition, &c. tho' they are express Words of Condition, shall be taken to be a Limitation; so it is held in Vent. 199, 202. And Holt C. J. said, he saw no Reason why they might not be so construed in a Deed, tho' the Law had not been carried so far; and so the Sense is, if she has no Issue by a Searle, upon her Death, the Estate shall remain over.

3dly, That the Estate-Tail of Mary and Elizabeth, or either of them, does not cease by marrying one that is not a Searle; for the Remainder over is in Default of both Conditions, and in the mean Time it is limited to her and the Heirs male of her Body, and she may survive the first husband and marry a Searle, and so there is a Possibility as long as she lives.

4thly, If the Estate had been to Mary and the Heirs male of her Body by a Searle to be begotten, provided and upon Condition if she do marry any but a Searle, that then it shall remain and be to J. S. and his Heirs, a Common Recovery suffered before Marriage will bar the Estate-Tail and Remainders; and tho' she after marry with another, it shall not avoid the Recovery. And the Court took a Difference between a collateral Condition and a Condition that runs with the Land: If the Donor reserve

a Rent with a Condition to re-enter, a Recovery will not bar it; otherwise if it be to re-enter for Non-payment of a Sum in gross. Vide 1 Mod. 108, 111. 2 Lev. 28.

And as to Common Recoveries (being of great Use) the Chief Justice desired to speak largely.

1st, If Tenant to the Præcipe vouches Tenant in Tail in Possession, and him in Remainder jointly, and they jointly vouch over the common Vouchee, this is good; not but that it may be more regular, that the Tenant vouch Mary Bryant, and she Elizabeth, and she over the common Vouchee, that the Recovery in Value may not be joint, but enure severally; yet the other Way is sufficient; for where in an Adversary Action, a Præcipe is brought against several, 'tis enough that one hath the Tenancy of the Land; and if he would plead that he is sole Tenant, and traverse that the others have any Thing, the Demandant may admit that and proceed as to him, and the Writ shall only abate as to the rest; also the others may disclaim; and as a Joining a Stranger with a Tenant does not hurt, so a Joining a Stranger with a Vouchee does not; for he is but in loco tenentis, a Tenant by the Warranty, 20 E. 3. 10. 2 E. 3. 8. Br. Several Tenancy 3. 4. 10 H. 6. 14. Rast. 276.

2dly, If Tenant in Tail makes a Tenant to the Præcipe, and he vouches a Stranger, and the Stranger vouches Tenant in Tail, and he the common Vouchee, that is good; for his being a Stranger is not material, because in Judgment of Law he is become Tenant by the Voucher to the Præcipe, and a Release to him is good, and the Voucher is good whether there be a real Warranty or no; At Common Law, if a Stranger was vouched, the Demandant could not counterplead it, but by West. 1. c. 40. he may, if he be absent, counterplead the Voucher, viz. That the Voucher and his Ancestors never had any Thing in the Land, not if he be present: It is enough that Tenant in Tail comes in and owns a Warranty; for there may be a Warranty, suppose an Adversary Action against Tenant in Tail who has a Warranty, and he makes a Feoffment in Fee with Warranty, or has levied a Fine with Warranty, and the Feoffee or Conusee vouch the Tenant in Tail, he may make use of his Warranty, and yet he was not seised of the Estate-Tail; but in that Case he may vouch the Warranty, and then he recovers in Recompence of his Estate-Tail; for whenever Tenant in Tail comes in as Vouchee, he comes in in Privy of all Estates he ever had, and consequently may vouch the Warranty. Vide 1 Inst. 385. a.

And the Chief Justice said, The Vouchee's being a Stranger was not material; because, tho' there be no real Warranty, the Recovery in Value is the same, and the Admittance of Tenant in Tail has made it real.

Tenant in Tail, and he in Remainder may be vouch'd jointly. Noy. 81, 82. 3 Co. Cuple-dike's Case 1 And 275.

If Tenant vouches a Stranger, who vouches Tenant in Tail, and he enters into Warranty, it is good. 1 Vent. 358. 2 Co. 60, 61. Civ. El. 562.

Tenant in Tail coming in as Vouchee comes in in Privy of all Estates he ever had. 3 Co. 60, 61.

Vide Lutw.
201, 208.

RECUSANTS.

[Vide Title Church of England.]

Domina Regina *versus* Peach. Mich. 3 Ann. B. R.

Licence to
dissenting
Minister in-
roll'd in one
County, don't
extend to
another.

Noy. 117.
Lane 60.
1 Lutw. 208.
4 Leon. 54.
2 Cro. 142.
3 Lev. 61.

A Dissenting Minister having qualified himself according to the Toleration-Act in one County, kept a Conventicle in that County; and afterwards removed into another, and kept a new Conventicle without a new Qualification: The Justices considered him notwithstanding the Toleration-Act. The Attorney-General moved for an Attachment against the Justices, but it was denied; then he moved for a Mandamus to permit him to preach, and that was denied also: The Court held, 1st, That a Mandamus is always to do some Act in Execution of Law, whereas this would be in Nature of a *Writ de non molestando*. 2^{dly}, That a dissenting Minister is still liable to the old penal Laws for Preaching in Conventicles, unless he qualify himself according to the Act of Toleration. 3^{dly}, That a Licence inrolled at the Sessions in one County, will not extend to another County; but he must have a Licence inrolled in the County where he preaches. But Note, The Law is since alter'd in this Particular, by the Act for preserving the Protestant Religion, by better securing the Church of England. 10 Ann.

Release

Release and Defeazance.

Vide Farell.
74, 75.
2 Saund. 48,
96.

Aloff *versus* Scrimshaw. Trin. 1 W. & M. B. R.

S. P. post
575.

IN Debt on a Bond for 1000 l. the Defendant pleaded a Covenant since made by the Plaintiff, whereby he covenanted not to sue for the said Debt upon the said Bond, for and during the Term of 99 Years: This was held naught upon Demurrer, for it is but a mere Covenant, and doth not enure as a Release or Defeazance, and so cannot be pleaded in Bar. Vide 1 Cro. 352, 623. 1 Ro. 939. 21 H. 7. 24.

(1)
Covenant not
to sue for a
certain Time,
is not a Re-
lease or De-
feazance.
1 Show. 46,
47.
Raym. 187,
393, 413.

Clayton *versus* Kynaston. Hill. 10 Will. III. B. R. Intr.
Trin. 10 Will. III. B. R. Rot. 246.

CLAYTON, the Executor of Clayton, the Executor of Winterhall, brought Covenant against Kynaston upon Articles, and declared as on Articles made between Killigrew and the said Kynaston, and others ex una parte, and Winterhall ex altera parte, wherein it was covenanted, that if Winterhall should be minded to give over acting Plays, and should give Notice in Writing three Months before he left off, that then three Months after such Notice in Writing, Winterhall should be allowed for every acting Day, 5 s. per Day, and that after the Death of Winterhall, 100 l. should be paid to his Executors within three Months. Provided such Notice should not be given but in an acting Week, and for Breach assigns that the 100 l. was not paid within three Months after Winterhall's Death. The Defendant pleaded that at the same Time another Deed was made between the said Winterhall of the one Part, and the said Kynaston of the other Part, wherein was contained the same Agreement, and then it was further covenanted by Winterhall in the same Deed, that in Case he gave Notice as aforesaid, then the said Kynaston should be discharged of all Debts, and be indemnified and saved harmless from all Agreements or Securities at any Time before made, or hereafter to be entered into; then he avers Notice was given, and that three Months elapsed, &c. and so relies upon this as a Defeazance. To this there was a Demurrer.

(2)
One Deed
not to be
construed as a
Defeazance
of another
without Ne-
cessity.
Vide Cro.
Car. 416.
Cro. Jac. 300,
623.
1 Lev. 172.

1st, It was urged for the Defendant, that this was a Defeazance; for whatever the Defendant lost in this Action would be recovered against him on his Covenant, which was but Cur. curity of Añon. Vide 1 And. 307. Mo. pl. 80. 2 Saund. 47, 48. One Deed a Defeazance to another made at the same Time with it. Vide 1 Inst. 265. Rebuttel founded on the same Reason.

The Court agreed, that if A. be bound to B. and then B. reciting this Bond, covenants to save him harmless, this is an absolute Defeazance; and if it be to save him harmless on a Contingency, 'tis a conditional Defeazance, because it hath an express Relation to the Deed; but in the principal Case there is not a Relation between the Deeds; but on the contrary, the Plaintiff's Deed is only to indemnify against all Covenants heretofore made, or hereafter to be made. There is therefore no Necessity to construe the Defendant's Deed to be void and useless as soon as made, or that one Deed has destroyed the other which was made at the same Time with it, or that Kynaston may pay it and lose at his Pleasure. Also the Court agreed, That where two are jointly and severally bound in a Bond, a Release to one discharges the other; and in such Case, if the joint Remedy is gone, the Several is gone too; and that in the Case at Bar, the joint Remedy was lost: But the Chief Justice, who delivered the Opinion of the rest, said, they did not determine, That on Covenant, where the joint Remedy failed, there could not be a several Remedy.

2dly, It was objected to the Declaration, That he declares of a Deed made between Kynaston of the one Part and Wintershall of the other, and does not say prædict. Wintershall for want of which he does not appear to be the same Person: This Exception was not much heeded. Cases cited pro and con were Yel. 101. 3 Cro. 912. Bridgm. 99. Dyer 70. Hard. 178.

3dly, It was objected to the Plea, That the Notice is not said to be given in an ending Week; and tho' it was urged to be by Way of Probisog and therefore ought to come on the other Side, (5 Co. 78. 3 Cro. 405. 7 Co. 10. Poph. 28. Plow. 376. 1 Leon. pl. 207.) and that the Plea said he had Notice secundum formam & effectum articuloꝝ, yet Holt C. J. answered, That where the Probisog goes by Way of Defeazance, it must be pleaded by him that takes Advantage of it; but this is not so, but alters the Sense of the Covenant, by explaining and tying up the Notice to a particular Time, which would not have been understood on the general Covenant, by which Means it becomes a Part of the Covenant, so that you must plead accordingly; and secundum formam & effectum articuloꝝ is only Matter of Conclusion, which cannot serve without Premises. And upon this single Point, Judgment was given for the Plaintiff.

Where a Proviso goes by Way of Defeazance of a Covenant, it must be pleaded on the other Side; otherwise where by Way of Explanation or Restriction of the Covenant.

Lacy *versus* Kynaston. Pasch. 13 W. III. B. R.

THE Plaintiff brought Covenant as Administrator to Lacy, and declared on the same Indenture in the Case before between Killigrew and Kynaston, and they ex una parte, and Lacy ex altera parte, reciting former Articles, and they hereby covenant jointly and severally with Lacy, That if he be minded to leave acting, and gives three Months Notice thereof to the Company, he shall be paid 6 s. 3 d. per Day for his Life, and that within three Months after his Death, his Executors shall be paid 100 l. And that if he die without such Notice, his Executors should be paid 100 l. within six Months after his Death, in the Nonpayment whereof the Breach was assigned: The Defendant craved Oyer, and pleaded another Deed made the same Day and Year, whereby Lacy and others covenant jointly and severally with the Defendant, that if he left off Acting, and gave Notice, he should be freed and indemnified of and from the said Covenant, and avers he left off and gave Notice, and became discharged, and so pray'd Judgment of the Action. The Plaintiff demurs, &c. And the Question was, Whether this was a Covenant or a Defeazance? And the Court held,

1st, That this Covenant in its Nature was not a Defeazance, because it wanted Words of Defeazance, viz. that the Thing be void.

2^{dly}, If A and B. are jointly and severally bound to H. and H. covenants with A. that he will not sue A. this is not a Defeazance, for still there is a Remedy on the Bond against B. otherwise if A. only had been bound, for then such Covenant excludes him from any Remedy for ever, to avoid Circuity of Action. Vide 43 Aff. pl. 44. This Difference being applied to the principal Case rules it, and it is but reasonable, because to construe this to be or enure as a Release or Defeazance, is to discharge all; otherwise of a Covenant, 34 H. 8. Br. Estranger al fait. 21. Lit. Sect. 376. Inst. 232. Hob. 66.

Topham *versus* Tollier. Trin. 1. Ann. B. R.

DEDT on a Bond against an Administrator, the Defendant pleaded a Release, whereby the Plaintiff reciting there were several Controversies between the Defendant and him about a Legacy, and the Right of Administration, releases to the Defendant all his Right, Title, Interest and Demand of, in, and to the personal Estate of the Intestate. Upon Demurrer this was held no Plea; for per Holt C. J. There is a Difference between a Release of all Demands to the Person of the Admini-

(3)
Defeazance must contain proper Words of Defeazance.
Vid 9 Co. 52.
3 Lev. 275.
1 Show. 151.
2 Lev. 214.
215, &c.

3 Lev. 275.
1 Show. 46.
47. 151.
2 Lev. 214.
215, &c.
Bond from A. and B. to H. joint and several Covenant from H. not to sue A. is not a Defeazance.
S. C. ante 573.

Post 578.
(4)
Release of all Demands to the personal Estate of the Intestate, releases not a Bond before Judgment and Execution.
3 Leon. Cas. 105. cont.
Vide 10 Co. 48 to 52.

Cro. El. 897. strator, as in Yelv. 214. and to the personal Estate, as in this
 Lutw. 249. Case; for the Bond is not any Right or Demand to the perso-
 250. nal Estate, till Judgment and Execution sued out.
 1 Lev. 99. 272.
 2 Lev. 210.
 Post. 578.

Vide Post.
 Reversion,
 Pag. 590.

REMAINDER.

Corbet *versus* Tichborn. Pasch. 6 W. & M. B. R.

(1)
 Attainder,
 Vide Post.
 630.

EJECTMENT and Trial at Bar; the Case was, J. S. was Tenant for Life, Remainder to his Wife for Life, Remainder to his first, second, &c. Sons in Tail, Remainder to the right Heirs of J. S. The said J. S. commits Treason and then has a Son, and then is attainted; and the Court held, That whether the Son was born before or after the Attainder, the contingent Remainder to him was not discharged by the vesting in the Crown during the Life of J. S. because of the Wife's Estate, which is sufficient to support it.

Vide Post.
 618, &c. ib.
 3 Lev. 284.
 3 Mod. 296.

Thompson *versus* Leach. Hill. 9 Will. III. B. R.

(2)
 Surrender of
 Tenant for
 Life being
 Non Compos
 to a Remain-
 der-Man, is
 void, and can-
 not bar con-
 tingent Re-
 mainder.
 Right of En-
 try will sup-
 port contin-
 gent Remain-
 der, Right of
 Action not.

A Devise was to Simon Leach for Life, Remainder to his first, second and third Sons, &c. Remainder to Sir Simon Leach in Tail, the Remainder to the right Heirs of Simon Leach; Simon Leach the Tenant for Life surrendered his Estate by Deed to Sir Simon Leach, and after that had a Son born and died, and the Son brought an Ejectment against Sir Simon, and Simon his Father was found to be Non Compos at the Time of the Surrender. Et per Cur. Taking the Surrender to be voidable only it was held, That the Plaintiff could have no Title; for his Estate in Remainder was a contingent Remainder, and if the precedent Estate was gone and determined by the Surrender, the Contingency could not arise. There must be a particular Estate actually in being, or a present Right of Entry, [Vide Bigot and Smith's Case, Cro. Car.] And it is not enough that there be

a Right of Action, but it must be a Right of Entry: And they held that it was not for want of Right to the Thing, but of Capacity to do the Act, that a Mad-man is hindered to abate his own Grant. 1 Cro. 102. 2 Saund. 387. 3 Keb. 2. And if this had been done in the Life of the Surrenderer by Inquisition, that would have preserved the contingent Remainder; but that cannot be done now, because the particular Estate is determined. To shew this, Holt C. J. said,

If there be Tenant for Life with a contingent Remainder to H. and Tenant for Life is disseised, and after that a Discent cast, and five Years expire, now the contingent Remainder is gone, for there is nothing now to support it, the Right of Entry being turned into a Right of Action: But before the Discent the Right of Entry was sufficient.

But they held the Surrender in this Case to be merely void, so that the particular Estate remained in him, notwithstanding the Surrender, and the contingent Remainder rightly vested.

If there be Tenant for Life with a contingent Remainder, and he makes a Feoffment in Fee upon Condition, and the Contingency happens before the Condition broken, the contingent Remainder is destroyed; for there must be a particular Estate, or a present Right of Entry when the Contingency happens; but if Tenant for Life enters for Breach before the Contingency happens, the contingent Remainder is revived, and may vest.

That Right
of Entry must
be present.

Weeks *versus* Peach. Mich. 13 Will. III. B. R.

H Debised out of his Lands a Rent to one for Life, with Remainder over, &c. And Shower objected, That there could not be a Remainder of a Rent de novo; for there cannot be a Remainder where there cannot be a Reversion. But per Holt C. J. There may be a Remainder of a Rent de novo; for the Intent of the Party gives it first a Being for the Whole, and then the lesser Estates are carved out of it. Vide 2 Lut. 1225.

(3)
Remainder
may be of a
Rent de
novo.
Vid. ant. 466.
1 Lev. 144.
Q. Chan. Cas.
79, 80.

RENTS.

1 Lev. 22, 25,
43, 144, 170.
2 Lev. 30, 80,
240.
3 Lev. 39, 150,
233, 295.

RENTS.

Stephens & Ux. versus Snow. Hill. 2 W. & M. B. R.

(1)
Growing
Rent not re-
leased by Re-
lease of all
Demands.
Vid. ante 575.
Pl. 4.
10 Co. 48,
to 52.
1 Lev. 99.
2 Lev. 210.

THE Plaintiff declared upon a Lease for Years, red-
dend. 30 s. at Lady-Day and Michaelmas, and assigns
for Breach Non-payment of a Year's Rent, due and
ending at Lady-Day, 1689. The Defendant pleaded a
Release dated the 18th Day of November, 1688. of all Demands;
and upon Demurrer, Judgment was given for the Plaintiff.
For the growing Rent not due, which is incident to the Reber-
don, was not discharged; tho' the first half Year's Rent, which
was a Duty demandable, was released; but here the Release be-
ing pleaded as a Bar to all, which it is not, the Plea is naught,
and Judgment must be given for the Plaintiff.

*Lord Rockingham & al. contra Oxenden & al. coram
Trevor, Master of the Rolls, 1711.*

(2) **T**HE Lessor dies upon Michaelmas-Day, between three and
four in the afternoon, before Sunset, the Rent being re-
served payable on Michaelmas-Day; the Question was, Whether
the Executor or the Heir, or, which is the same, the Jointurels
of the Lessor, should have this Rent? The Executor insisted that
this was the Rent-Day, that it might have been paid in the
Morning, and that a Release upon such Payment had been a
Discharge; and they denied the Opinion of Hale in 1 Saund. 287.
and said, that so it was held by the Judges of Assize at Durham, viz.
Baron Bury, &c. But on the other Side it was argued and de-
creed, That the Rent should go to the Heir or Jointurels, be-
cause at the Time of the Death of the Lessor, there was no Re-
medy nor Means to compel the Payment thereof. Vide 10 Co.
Clun's Case, 2 Bullst. 293. Plowd. 172, 173. 1 Inst. 202. 1 Keb.
59. 1 Sid. 162. 2 Cro. Fox *versus* Whichcot.

RE-

Moor v. Watts. Mich. 15 W. 3. B. R.

REPLEADER.

obnsig

Staple *versus* Hayden. Trin. 2 Ann. B. R.

Vide Cro.
El. 316, 883.
3 Co. 32.
1 Leon. 79.
Lat. 348.

S. C. 1 Salt.
216.

It was laid down by the Court in the Case of Staple and Hayden. Trin. 2 Ann. B. R. *Which* see Title Default, p. 216. First, That at Common Law a Repleader was allowed before Trial, because a Verdict did not cure an immaterial Issue: But now a Repleader ought never to be allowed before Trial, because the Fault of the Issue may be helped by the Trial by the Statute of Jeoffails.
2dly, That if a Repleader be denied where it should be granted, or granted where it should be denied, it is Error.
3dly, That the Judgment of Repleader is general, viz. Quod partes replacent; and the Parties must begin again at the first Fault, which occasioned the immaterial Issue: That if the Denial be ill, the Verdict ill, and the Replication ill, the Parties must begin de novo; but if the Verdict be good and the Replication ill, at the Replication. Vide 3 Keb. 664.
4thly, No Costs are allowed on either Side.
5thly, That a Repleader cannot be awarded after a Default.

6 Mod. 1, 1.
Repleader
not allow'd
before Trial.
Vide 6 Mod.
2, 3.
1 Lev. 32.
3 Keb. 664.
3 Lev. 440.
2 Lev. 129.
142.
If denied
where grant-
able, Error.
6 Mod. 2,
103.
Parties begin
de novo at
the first Fault.
1 Mod. 2.
No Costs.
Not after De-
fault.
6 Mod. 2, 3.

See the Form of a Repleader. Lutw. 1612.

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Vide 1. Lev.
96. 21. 13.
Reyn. 33. 14.
255. 80.
6 Mod. 68.
81, 103, 158,
189.

Replevin and Homine Replegiando.

[Vide Title Avowry.]

Hale v. Esdaile Bar. Hill. 8 Will. III. B. R.

(1)
Ballif of a
Hundred
cannot give
Replevin
of Court.

IN *Trelawny* for taking, &c. The Defendant justified that the Place where was a Hundred, and came out of which had a Court of all Actions, Replevin, &c. grantable to or out of Court, and that a Replevin was granted to him by the Bailiff out of Court, *jurata*, &c. It was questioned, whether a Hundred Court could interfere to take issue of Replevin, because the County Court could not hold issue of them at Common Law, but here enabled by the Statute, which extends not to the Hundred Court; *Et per tot. Cur.* clearly, supposing they may move there in Court, yet they cannot interfere to grant them out of Court.

Richards v. Cornforth Mich. 9 Will. III. B. R.

(2)
Avowry for
Rent, where
Part is not
yet due, is
Error; but
might be cu-
red before
Judgment, by
abating the
Avowry as to
that.
Vide Cro.
Jac. 473.

ERROR of a Judgment in Replevin, wherein the Defendant abowed for Rent and had Judgment; and now *32*. Carthew assigned for Error, that Part of the Rent became due after the Distress taken, for the Distress was made the 26th Day of September, 7 W. 3. which was three Days before Michaelmas, whereas the Defendant had abowed for that Michaelmas Rent. *Et per Cur.* This is naught; for the Judgment is to have a Return irreplevisable, i. e. that he shall have the Distress as a Pledge, till all the Rent abowed for be paid, and that was more than was due at the Time of the Distress. In this Case the Abowant before Judgment should have abated his Abowry, quoad the Michaelmas Rent, and taken Judgment for the rest; but the Defendant getting his Abowry mended in C. B. the Roll was amended here in B. R. and so the Error was cured.

Moor

Moor *versus* Watts. Mich. 12 Will. III. B. R.

UPON a Habeas Corpus it was returned, that Watts was in Custody by Virtue of a Capias in Withernam; and the Case was, That upon a Homine Replegiando, the Sheriff returned an Inquisition, finding that the Party was eloiigned, whereupon a Withernam issued, returnable octab. Martini, which was not yet come; but the Defendant was taken thereupon and moved to be bailed, and the Matter was four Times more debated. It was objected, That he could not be bailed upon the Withernam; for it was an Execution, and he had no Day in Court, and the Plaintiff could not have a new Withernam: And the Lord Gray coming into Court upon an Elongata found, was committed and lay by a Fortnight: Also they cited Raymond 474. and said the Return of the Elongata was a kind of Confession, and the Defendant thereby estopped from pleading Non cepit. That which seemed to be the Sense of the Chief Justice, to which the rest agreed, was,

1st, That a Homine Replegiando does not differ from a common Replevin de Averiis; and that in a Replevin for Cattle, the Sheriff must either return a Deliberari feci, or an Executo thereof, viz. That no Body came to shew him the Cattle, or Elongata; But he cannot return they were not taken, for that goes to the Point of the Writ which the Defendant is to satisfy, and not the Sheriff; that therefore the Sheriff must return an Elongata where he cannot make a Deliverance, and the Defendant is not concluded by the Return of the Elongata to plead Non cepit, because it was necessary, and he could not avoid it: And as for this Reason, no Action lies against the Sheriff for a false Return of an Elongata, where he cannot make Deliverance; so the Defendant is not concluded to plead Non cepit to the Action, because he cannot falsify the Return.

2^{dly}, That the Capias in Withernam does not alter the Case nor make it the stronger, because it is the mere Consequence of the Return of the Elongata; therefore he is no more estopped by the Withernam than he was by the Elongata to plead Non cepit, or to claim Property if it were a common Replevin de Averiis.

3^{dly}, That in Replevin de Averiis after an Elongata and Withernam, if the Defendant pleads Non cepit, he shall have his Cattle again, and even a Capias in Withernam against the Plaintiff for them; so it is if the Defendant claims a Property. Since the Taking of Property is in Question, the Law deems it reasonable that the Defendant should have his Goods again during the Dispute: And by the same Reason in a Homine Replegiando

(3)
Homine replegiando.
See a Show.
218, 221, 10
232.
6 Mod. 84.
Lit. Rep. 54.
3 Leon. Cal.
323.

The Sheriff cannot return they were not taken.

After Elongata returned, and Withernam awarded, the Defendant may plead Non cepit.
See a Show. ut supra.
Farell. 17.

Upon pleading Non cepit or claiming Property, the Defendant shall have his Goods again. So in Homine replegiando he shall be bailed on Non cepit.

Withernam
is mesne Pro-
cess.
Vide 2 Show.
218. Sec.
6 Mod. 84.
Farell. 17.

There may
be a new Wi-
thernam after
the Defen-
dant has been
bail'd upon
the first.

If on Elonga-
ta returned
the Defen-
dant pleads
Non cepit,
no With-
ernam shall
issue.
Vide 6 Mod.
84.
Lic. Rep. 54.
3 Leon. Cal.
333.

In Homine
replegiando,
Defendant
cannot be
bail'd before
the Return
of the Wi-
thernam.

giando the Defendant upon pleading Non cepit, should be resto-
red to his Liberty; and the Court denied the Withernam to be
an Execution, for that cannot be before Judgment, and held it
only to be a mesne Process: Also they disliked the Case in Ray-
mond, and the Case of the Lord Gray, but affirmed the Case in
the Reg. 70. s. and thought it made for them, and that upon Non
cepit pleaded, he might be bailed. Keil. 71. a. F. N. B. 74. were
clear. Among this further Reason, that hereby the Supposal of
the Court is denied and balanced, and the Matter stands indiffe-
rent, according to the Rule of Bailing laid down by my Lord
Coke, upon West. 1. c. 15.

The Court held, That there might be a new Withernam,
but observed it was not necessary nor material to determine
that in this Case; for the Bail must be in a Sum certain, with
Condition that he appear or die in diem; and if Judgment
against him, that he render his Body in Withernam ibidem re-
manens quousque he render the Party, and permit him to go at
large; therefore if he be rendered again, he is in Custody upon
the Withernam, as before. So if H. brings an Audita Querela,
and is bailed, and Judgment is against him, when H. is rendered
back, he is in Custody again upon the first Execution; and so in
an Appeal of Murder, if the Defendant be bailed and makes De-
fault, Process shall go against the Bail, and also a Capias
against him; but if he render, he is in Custody upon the Appeal;
yet Note, Upon his Default a new Capias lies against him. So
in this Case, if before the Withernam the Defendant had pleaded
Non cepit, that had stopped the Withernam; but if that had
been found against him, the Impediment was removed, and a Wi-
thernam should have gone; so here, if after the Withernam, he
pleads Non cepit, which is found against him, and he is not ren-
dered, a Capias in Withernam lies against him, as well as Process
against his Bail, for there is nothing to hinder it. Vide 8 H. 4.
2. T. Mainprize 23.

The Plaintiff's Counsel seeing that by the Opinion of the Court
the Defendant could not be bailed, unless he pleaded Non cepit,
would not deliver a Declaration; which the Court said, was
putting a Difficulty upon them; and upon this, in order to non-
suit the Plaintiff, the Question was, Whether the Plaintiff was
demandable upon the Withernam? Also there was a former Que-
stion, Whether he might be bailed upon the Habeas Corpus before
the Return of the Withernam?

As to the last Point the Court held, That before the Return
of the Withernam the Defendant could not be bailed; and so it is
of an Appeal of Murder, the Defendant ought not to be bailed
before the Return of the Writ; and tho' this has been done in
an Appeal by some Judges, yet per Holt C. J. It was done mi-
nus rite; he would not therefore allow Bail before the Return of
the

the Withernam, and said, that in a Homine Replegiando after an Elongato returned, if the Defendant comes in gaols and pleads Non cepit, he shall not be put to Oath Ball; (Ratio videtur esse, because hereby the Withernam is stopped or suspended,) but if he comes in in Custody upon a Capias in Withernam, he must give Ball, and cannot be admitted to that till he call for a Declaration, and plead Non cepit.

See 2 Show. 218 to 232.

As to the other Point the Chief Justice said, that whenever a Writ is awarded, which is returnable, the Return-Day is a Day to both Parties to appear, and tho' the Writ be returnable not served, the Defendant may appear to prevent any ill Consequence: As to prevent a Capias, 4 E. 4. 69. So here to save himself on a Withernam. Respond. 37. 7 E. 4. 5. Upon a Distingas proximas villas, &c. the Defendants have no Day, yet they may appear and traverse. In a common Replevin the Original gives no Day, for that is Vicoriel; so is the Alias, but the Pluries is returnable here; and tho' there is no Summons nor Attachment in the Writ, yet the Day of the Return is a Day to the Parties, and the Entry is, that the Defendant attaches est ad respondend. de pl'ito quare cepit, &c. And the Reason is, because tho' in Truth there was not actually an Attachment, yet virtualy and in consequence of Law it is so, he being bound to appear upon the Peril of a Withernam. And tho' the Plaintiff be absent, he may make an Attorney: Hereupon he was called and consulted, for otherwise the Defendant might lose his Liberty forever by such a Contrivance.

Plaintiff is demandable on the Return of the Withernam, and may be non-suited for not appearing.

Horn *versus* Lewin. Hill. 12 Will. III. B. R.

In Replevin the Defendant made Conusance for 100 l. de redditu onerat. in Arretro pro uno Anno. The Plaintiff as to 50 l. pleads de injuria sua propria absque hoc quod fuit in Arretro, and as to the other 50 l. that he was ready on the Land till Suu-let, and none came to receive it, and that he is still ready to pay it, and brings the Money into Court: Defendant demurs specially to the first Plea, quia attingit ad generalem exitum: And as to the other 50 l. he takes it out of Court, & pro dampnis dicit quod non obtulit, &c. and upon this the Plaintiff demurred.

(4)
In a Plea in Bar of Tender of Rent in Replevin, the Money ought not to be brought into Court. Vide Post. 596, 597.

This Case being several Times spoken to, it was held,

1st, That de injuria sua propria absq; hoc, &c. was an imperfect round-about Way of Pleading the general Issue, and that it amounted to no more than the general Issue, ricens in Arrere, and consequently was ill upon a special Demurrer: Also this Traverse put the Defendant to an unnecessary Replication; therefore as to the 50 l. 'twas clear for the Defendant.

De injuria sua absq; hoc quod fuit in Arretro; amounts to the general Issue.

adly,

adly, As to the other 50 l. the Court held, 1st, That the bare paratus was not sufficient, and did not amount to a Tender without an obolus, and therefore his being ready on the Land, since he did not tender the Rent, did not oblige the Grantor to demand the Rent before he made Distress, Hob. 207. 1 Ven. 322. And so the Distress was lawful without a Demand, and then the Abowry or Conusance of the Defendant stands unanswered. 2^{dly}, The Profer of the Money was impertinent and sole, Keil. 20. Dy. 227. 2 E. 4. 25. Pl. 15. 2 Cro. 126. In Debt upon a Bond, there may be a Profer, to save Damages; because there the Money is the Thing in Demand: But it cannot be in an Abowry to a Replevin, because the Abowry is to justify the Taking the Cattle, and whether the Money is paid or not, is not the Question; but if the Distress was rightfully taken, the Abowant must have a Return; if wrongfully, he must answer the Plaintiff's Damages. If then the Profer was superfluous, so was the Abowant's accepting it, and Judgment must be given for the Abowant on the Abowry, by which it appears that Rent was behind, and the Distress lawful, and to which there is no sufficient Answer.

(1)

Pratt *versus* Rutlith. Trin. 13 Will. III. B. R.

Vide this Case, Title Avowry, Pl. 6. Pag. 95.

OF Property claim'd in Replevin, 6 Mod. 69, 81, 139, 140.
1 Lev. 90. Lutw. 1316.

REQUEST.

Vide *Lev.*
68, 85, 189,
190, 191,
3 *Lev.* 363,
366.

Dominus Rex versus Bel. Mich. 8 Will. III. R. R.

Fitz-Hugh versus Dennington. Mich. 3 Ann. B. R.

S C 6 Mod.
227, 299.

DEBT on a Bond, with Condition, reciting, That the Plaintiff was Apprentice to the Defendant for seven Years; and that if the Defendant at the End of seven Years should procure him to be made free of the Joiners Company (if requested) then the Bond to be void. The Defendant pleaded, That at the end of seven Years or afterwards he was not requested. The Court held a Request necessary, for the Condition was to do a collateral Thing; and as it is part of the Condition it must be averred: And here a Request within the seven Years, when the Thing was to be done, shall not be intended per Curiam. Afterwards this was moved again by Broderick, who urged, That the Defendant should have pleaded he was not requested generally, and that the Request might have been before the End of the seven Years. As per Curiam: This was to be done post factum, but ad factum, and the End of a Thing is always part of that of which it is the End, and he was to be made free the last Day of the seven Years, and should have requested some convenient Time in that Day that the other might have a reasonable Time to do it in. Adjudged on a Writ of Error of a Judgment in the Marshal's Court for the Plaintiff, and the Judgment reversed, per totam Curiam.

Condition to do an Act at the End of seven Years on Request. Request must be made on the last Day. See 1 *Lev.* 68, 85. Pal. 331. Farell 143, 144. Alcyn. 29. Sey. 49, 74. Yel. 66. 1 Cro. 179, 280. 2 Cro. 181, 652.

R E S.

RESCUE.

See Cro.

Cov. 109.

Cov. 109.

Cov. 109.

Cov. 109.

Cov. 109.

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Howt. P. C. 139, &c.

Dominus Rex *versus* Belt. Mich. 8 Will. III. R. B.

(1)

Where the

Rescuer shall

be discharged

upon Affidavit

Vid. Pl. 3.

Vid. Pl. 3.

Vid. Pl. 3.

Vid. Pl. 3.

Vid. Pl. 3.

Vid. Pl. 3.

Vid. Pl. 3.

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Vid. Pl. 3.

Vid. Pl. 3.

IN the Case of a Rescue there are two Ways of Proceeding: If the Rescuer is returned to the Plaintiff, and Process of Outlawry issues, and the Rescuer is brought into Court, he shall not be discharged upon Affidavits: but where upon the Return of a Rescue an Attachment is granted and the Party examined upon Interrogatories, upon answering them he shall be discharged.

See Ray. 161.

1 Lev. 214.

2 Lev. 25 or

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Anonymus. Trin. 12 Will. III. B. R.

(2)

Return that

the Bailiffs

had him in

Custody of

the Sheriff,

and H. res-

cued him out

of the Custody

of the Bai-

liffs, ill for

Repugnancy.

Vide ante

436, 432.

Post. 529.

1 Show. 180.

Lutw. 130.

THE Sheriff returned *virtute brevis mihi directi feci War-*
rant *Ar. & B. ballivis meis qui virtute inde ceperunt the*
Defendant B. in custodia mea habuerunt quousq; such and such
rescuerunt him, et custodia ballivorum meorum: And Mr. Eyre
moved to quash it, and it was quashed per Cur. For per Holt C. J.
When the Bailiffs have arrested the Party, he is in Fact and
in Truth in their Custody; but in Law, he is in the Custody of
the Sheriff. An Answer either Way is good, viz. That he was
rescued out of the Bailiff's Custody, or that he was rescued out of
the Sheriff's Custody; but to say he was in the Custody of the
Sheriff, and yet rescued out of the Custody of the Bailiffs, is
repugnant.

Anonymus. Hill. 3 Ann. B. R.

(3)

Attachment

for a Rescue

never grant-

ed upon Affi-

davits.

Fine for a

Rescue.

UPON an Affidavit of a Rescue, an Attachment was pray'd against the Rescuers, and this was a Rescue upon mesne Process; but denied; for per Holt C. J. The Rescue must be returned upon the Writ, and the Motion and Attachment founded upon that; but it is never the Course to grant it upon Affidavits.

Sir Samuel Astry said, it was the constant Course upon the Return of a Rescue, to set four Nobles fine upon each Offender, and that he had it from Mr. J. Twysden. Hill. 11 W. 3. B. R. Vide 2 Jo. 198.

See 6 Mod. 141. a Difference where 'tis on mesne Process, and where on an Execution.

RESTITUTION.

Vide Raym.
85-
1 Lev. 312.

Ben & Regina *versus* Leaves. Trin. 3 W. & M. B. R.

In an incident of *Barrery*, the Defendant was convicted and fined 100 l. which was levied by the Sheriff, and paid into the hands of the Comptroller; afterwards the Judgment was reversed. Pemberton moved for a Rule for Restitution against the Comptroller. Holt C. J. It cannot be, for they do not shew to any Extent here: You ought to sue out a Special S. C. to make them parties, as in 1 Cro. 328. but this he refused, saying, this Case differed: He put this Case: A Replevin in Chattels is granted, or makes a judgment; afterwards the Judgment is reversed: Will a writ of Restitution lie? or can it remain out, because the Defendant pleads not Guilty in the Return, which Pemberton agreed. It is a fine replevin Damages, and then parties, and the Judgment is reversed, Restitution lies against her and husband; but they are parties: And the Motion was denied.

(1)
Writ of Re-
stitution lies
not against
any that are
not Parties to
the Record.
Raym. 85.

Dominus Rex *versus* Toffin, & al. PHIL. 10 Will. III. B.R.

Vide, Mod,
443, 444.

A Motion was made for Remission, upon giving an Affidavit of Forfeiture Entry: the Case was, That the Lessor agreed for Lease for Rent, and while he was in Canada entered the House under Licence of Forfeiture by a Probate in the State; but the Motion was denied, because here appears a Title sounding over, which he was not void by Under Means, but ought to make his Remedy by Ejectment according to Law: Otherwise, how do Entry appeared.

(2)
Refutation/
denied upon
quishing In-
quisition of
forcible En-
try, base for
Years stand-
ing out. now
Cro Bl. 466.
a Leon. Oak
461
naval and
vina

Domina Regina *versus* Winter. Pasch. 4 Ann. B. 1.

UPON a Motion made by Mr. Broderick for a Proce-
 in a Case of an Inquisition taken by Justices of Peace,
 and a forcible Detainer found, and a Warrant granted by them
 to restore the Possession, which was suspended by a Certiorari is-

(3)
 Traverse to
 Inquisition of
 forcible En-
 try is a Super-
 sedes to Re-
 stitution.

sued out of this Court, it was said by Holt C. J. That if the Party against whom the Inquisition was found would traverse the Force, that was always a Reason to stay Restitution; nay, that it had been held a Superseas to the awarding Restitution, and that it was so in Sir Richard Bray's Case: There an Inquisition found a forcible Entry: The Defendant offered immediately before the Justice to traverse the Force, the Justice refused the Traverse and granted Restitution; and Kelynge C. J. granted Re-restitution. He said also, that all Inquisitions of Office are of common Right traversable; so is a Distringas proximas villatas, in Case of pulling down Hedges in the Night, on the Statute of West. 2. tho' the Statute mentions no such Thing: And if in Case of an Inquisition of forcible Entry taken before a Justice of Peace, the Defendant tenders his Traverse immediately, the Justice must adjourn to another Day, and award Process to return a Jury. Powell J. said, That in the Case in Dyer 122. a Traverse of the Indictment was held to be a Superseas only at Election, but laterly it had been held an absolute Superseas: And he said also, That if H. licence another to enter into his Land, and take the Profits, 'tis a Lease at Will; and if the Licence was for a Year, 'tis a Lease for a Year; otherwise of a Licence to hunt: And if H. licence another to come upon his Dock, (which was the principal Case) and carry on his Trade, 'tis a Lease, because 'tis all the proper Profits of a Dock. Note, Trin. 11. W. 3. Rex vs. Scarlet. The same Question was, viz. Whether Re-restitution should be granted, because the Justice had refused a Traverse to an Inquisition of forcible Entry? But not resolved. 1 Sid. 287. 2 Keb. 571. Dy. 122. Str. 359, 360. were cited.

Vide Cro.
Jac. 166, 698.
Cro. Car. 328.

Anonymous. Pasch. 4 Ann. B. R.

(4)
Where the Money recovered in a Judgment appears by Record to be paid, Restitution shall be without a Scire facias; otherwise where leved only.

WHERE the Plaintiff has Execution and the Money is leved and paid, and that Judgment is afterwards reversed; there, because it appears on the Record that the Money is paid, the Party shall have Restitution without a Scire facias, and there is a Certainty of what was lost; otherwise where it was leved but not paid; there must then be a Scire facias, suggesting the Matter of Fact, viz. the Sum leved, &c. But where Judgment is set aside after Execution for irregularity, there needs no Scire facias for Restitution, but an Attachment shall be granted upon the Rule for Contempt, if there be not a Restitution. Per Holt C. J.

Return

Return of Writs.

[Vide Title Writs.]

Vide 4 Leon.
Caf. 69, 145,
223.
Cro. El. 310.
Cro. Car.
189.
Post 699.

Wilson *versus* Law. Mich. 6 W. & M. B. R.

WILSON brought an Appeal of Murder against John Law for killing his Brother Robert Wilson, and declared against him: The Defendant moved Oyer of the Writ and Return; and having Oyer, demurred to the Writ and Return, and to the felony pleaded over, Not guilty: Exception was taken, 1st, That the Writ commanded the Sheriff, quod attach. Johannem Law, &c. And the Sheriff had returned attachari feci: This they pretended was no Answer to the Writ, the Infundition whereof is personal; but the Court held it well enough, for the Sheriff was not bound to execute it in Person, but might do it by his Bailiffs. Dyer 241. 2 Ro. 457. And what the Bailiffs do by the Sheriff's Command, is done by the Sheriff. Nam qui facit per alium, facit per se. If he had returned attacharius est, it had been good: Capias est in a good Return to a Capias: Kitch. 248. For if there is the Substance, it is no matter for Form, as H. 6. 6. a Scire facias was returned, Scire faci A. B. inchoat addung infra nomina. Per because it was said to be virtute brevis pradiet, prout mihi prapipitur, it was adjudged good.

2dly, The Sheriff returned, Ita quod Corpus ejus paratim habeo ubicumq; and it was objected this was Evident, and also impossible. Sed per Cur. The Return is good without it: tis therefore but Surplusage, which will not vitiate a Writ of Indictment, much less a Return, which requires not such Preciseness in Form. 3 Cro. 893, 2 Ro. 460.

See more of this Case, Title Appeal, Pl. 2. pag. 59.

Palmer *versus* Price. Mich. 7 Will. III. B. R.

An Action was laid in Staffordshire, and Judgment for the Plaintiff, he sued out a Fieri facias with a Testatum into Worcesterhire, and now it was moved that this was irregular and ought to be set aside, because no Fieri facias had ever gone into

Vol. II.

Q a 2

Stafford-

Surplusage in
Return re-
jected.
Vide ante
430, 431.
436, 586.

Process
whereon to
ground Te-
statum is re-
turn'd by the
Attorney of
Course.
Ante 515.

Staffordshire; and the Sheriff of Staffordshire made Affidavit that he never returned any Fieri facias in the Cause: Sed non allocatur; for the Fieri facias upon which the Testatum is founded, is returned of Course by the Attornies themselves, as Originals are; if you search the File you may find one, and that is sufficient.

Vide ante
Remainder,
p. 596.
1 S. 100.
261.
1 S. 100.
1 S. 100.
209, 233,
406.

REVERSION.

Vide ante
Remainder,
p. 596.
1 S. 100.
261.
1 S. 100.
1 S. 100.
209, 233,
406.

Abbot *versus* Burton, Trin. 7 Ann. C. B.

H, seised of
Lands a parte
materna, li-
mits several
Estates with
Remainder to
the Use of his
right Heirs.
The Heir a
parte materna
shall have it,
being the an-
cient Use.

No difference
between ex-
press and im-
plied Use.
Post 675,
676.

No difference
between ex-
press and im-
plied Use.
Post 675,
676.

No difference
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press and im-
plied Use.
Post 675,
676.

J. S. being seised in Fee of certain Lands descended to him a parte materna, covenanted to levy a Fine thereof to A. and B. to the Use of them and their Heirs, to the Intent that a Common Recovery should be suffered against the said Countess to the Use of J. S. for Life, Remainder to his Wife for Life, Remainder to his first, second and third Sons in Tail, &c. Remainder to the right Heirs of J. S. The Fine is accordingly levied, and then the Common Recovery is suffered against the Countess of the Fine as Tenants to the Praecipe with Coucher of J. S. Afterwards J. S. and his Wife die without Issue, and the Lessor of the Plaintiff is Heir of J. S. a parte materna, and the Defendant Heir general. This Matter being found upon a Special Verdict in Chancery, the Question was, Whether this Limitation of the Remainder to the Use of the right Heirs of J. S. did create a new Estate descendible to the Heirs general, or was only the ancient Use? And the Resolution of the Court delivered by Trevor C. J. was for the Plaintiff, that it was the ancient Use, and that there was no Difference when upon the Conveyance of an Estate, any Part of the Use results by Implication of Law, and when it is referred by express Declaration to the Party from whom the Estate moved; for there is no Reason that a greater Alteration should be wrought in a Use which a Man by express and plain Words reserves to himself upon a Conveyance of his Estate, than when the Law makes a Construction of this Intent to reserve it, not from express Words, but from other Circumstances and Presumptions, which

in the Consideration of Law do as strongly and manifestly declare his Mind. And for this was cited the Case of Godbolt and Freestone, 3 Lev. 406.

But the Difference whereby that Case was endeavoured to be distinguished from the Case in question was this: That was upon a Feoffment to the Use of the Feoffor for Life, Remainder to his first, second, and other Sons in Tail, Remainder to the right Heirs of the Feoffor; and adjudged, that this Remainder was to the Heirs of the Feoffor a parte materna, according to the ancient Estate and Use which the Feoffor had before the Feoffment: And the Reason was, because this Remainder of the Use did arise out of the Estates which immediately moved from the Feoffor, and was no more than what the Law would have reserved, if no Use at all had been declared of the Remainder. But in the present Case, the Use limited in Remainder to the right Heirs of J. S. does not arise out of an Estate that moved immediately by that Conveyance from J. S. but out of the Estate of the Conusees who were seised in Fee both of the Estate and Use by the Fine, and also by the Common Recovery convey over that Estate out of which all the new Uses and the Remainder in Question arose. To this the Chief Justice said, That the Fine and Common Recovery were both to be taken as one entire Conveyance, consisting of these several Parts, and directed as to the Use of them by the same Covenants. That tho' the Conusees had a Seisin in Fee of the Estate and Use vested in them by the Fine for a special Purpose, and upon that Seisin the Common Recovery was had, and in Witness the Estate passed by it was her Estate; yet upon Consideration of the whole Conveyance the Estate did originally move from J. S. who was the Conusor of the Fine, and for that Reason, if there had been no Limitation at all of this Remainder of the Use upon this Recovery, he took it to be very clear, that so much as remained unlimited should revert to the Conusor and his Heirs, and not to the Conusee in whom the Estate was not vested with a Purpose to create him any Interest, but in order to forward and compleat the Conveyance of the Conusor's Estate, which was taken as one Conveyance; then does the Use limited upon the Common Recovery, as properly arise out of the Estate that moved from the Conusor of the Fine, as if he had made a Feoffment or Fine, or any single Conveyance to that Use. Judgment for the Plaintiff.

Note, Estates-Tail can't be barr'd where the Reversion is in the Crown, Raym. 358.

RE

REVOCATION.

See 1 Lev. 86.
2 Lev. 149.
Cro. Jac. 497.
3 Lev. 213.
1 Show. 89.
(1)
Special Ver-
dict finding
a Will of
Lands, and
that after-
wards the
Testator
made aliud
Testament.
imports not a
Revocation.
1 Co. 112,
& 174.
10 Co. 86.
2 Lev. 149.

Hitchins versus Basset. Trin. 5 W. & M. B. R.

In *Ejectment*, the Jury found a Special Verdict: That Sir H. Killigrew being seized in Fee, made his Will, and devised his Lands to B. for Life, Remainder to C. in Fee; they find moreover that Sir H. Killigrew made aliud Testamentum in writing, but what were the Contents of that Will they don't know: The Question was, if the first Will was revoked? Finch argued, That such later Will is not a Revocation, for a Man by one Will may dispose of one Acre, and by another Will of another Acre: So if a Man purchase Lands after he has made his Will, he need not make his Will over again, but make another Will as to those: Vide Cro. Car. 195. Therefore this other Will might be of other Lands and no Revocation, and the aliud Testamentum might be no Revocation, but might be consistent. Cro. Eliz. 721. Cro. Car. 24. Lovins contra argued, That Revocations are favoured, because they are in the Nature of Rescission to the Will, and all Rescissions are favoured. Vide Dyer 110. Moor 429. 1 Roll. 614. A Deed of feoffment without Livery, a Bargain and Sale without Instrument, a Grant of a Reversion without Acknowledgment will revoke a Will, and yet they are void Will; but the Reason is, That it appears now it was not the Testator's Intent that it should revoke his Will, the first Will must be supposed to be perfect and in force all; and if a Man changes by Deed, he must in pleading say, that the Testator by his last Will revoked, &c. 44 Aff. 36. 2 Ric. 2. 3. 4. But the Court were of Opinion, That it was no Revocation, and the aliud Testamentum might concern other Lands, or no Lands at all, or be a Confirmation of the first: And the Judgment was afterwards affirmed in the House of Lords. Vide Hard. 574. Parl. Cases 146.

Lugg versus Lugg. Mich. 8 Will. III. B. R.

(2)
Will of per-
sonal Estate
presumed to
be revoked
by Alteration
of Circum-
stances.
Vid. 1 Salk.
257.

BEFORE a Commission of Delegates. One being single, made his Will, and devised all his personal Estate to J. S. afterwards he married and had several Children, and died without other Will or Disposition, and now coram Delegatis, of which Treby

REVOCATION.

See 1 Lev. 86.

2 Lev. 149.

Cro. Jac. 497.

3 Lev. 213.

1 Show. 89.

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Treby

Treby C. J. was one, it was ruled. That there being such an alteration in his Estate, and Circumstances so different at the Time of his Death from what they were when he made the Will, there was Room and presumptive Evidence to believe a Revocation; and that the Testator continued not of the same Mind.

For Revocation of Uses, &c. Vide 1 Co. 117, 1174, 6 Co. 33, 34, 10 Co. 86, 143. Cro. Car. 472. Chan. Caf. 242. 2 Lev. 149.

For the Rioters & Routers, vide 1 Co. 117, 1174, 6 Co. 33, 34, 10 Co. 86, 143. Cro. Car. 472. Chan. Caf. 242. 2 Lev. 149.

Riots, Routs, and unlawful Assemblies.

See the Stat.
13 H. 4. c. 7.
2 H. 5. c. 8.
19 H. 7. c. 13.
& Stat. 1 Geo.
c. 5.
2 Rol. Abr. 82.

Dominus Rex versus Ingram & al. Hill. 8 Will. III. B. R.

INGRAM and many others were convicted of a Riot on 13 H. 4. c. 7. before two Justices of Peace, together with the Sheriff. Et per Cur. 1st, If the Rioters be convicted on Oath, the Sheriff must be Party to the Inquisition; but if the Rioters disperse before Conviction upon Oath, the Sheriff need not be Party, for the Justices may make the Inquisition without the Sheriff. 2dly, Such Inquisition by two Justices is pro Domino Rege, and need not be alledg'd capt. pro Domino Rege & corpore Comitatus, as an Inquisition by a Grand Jury, who inquire as well pro corpore Comitatus as pro Domino Rege. 3dly, If the Justices make not Inquiry within a Month after the Riot, they are punishable; yet they may enquire after the Month, for the Lapse of a Month does not determine their Authority, but only subjects them to a Penalty.

(1)
To Inquisition of Riot upon View, Sheriff must be Party, otherwise not, and such Inquisition is pro Rege only.
See 6 Mod. 141.
1 Sid. 166.
1 Keb. 695.
Raym. 386.

Dominus Rex versus Heaps. Pasch. 11 Will. III. B. R.

INDICTMENT, That the Defendants riotose & routose & illicite assemblerunt, & sic assemblerati existentes, riotose & routose insultum fecerunt in quendam J. Russel, &c. Upon the guilty, the Jury found two Defendants guilty, and acquitted the rest: And it was moved in Arrest of Judgment, that two cannot

(2)
Indictment for a Riot and Assault. Acquittal of the Riot is so of the Assault.
Vide 1 Salk. 384, 385.
2 Show. 93, 149.

make

Vide Post.
642. Pl. 14.
2 Show. 93,
&c.

Vide 3 Mod.
141.
Hawkins P.
C. 155.

make a Riot, and therefore cannot be guilty of a Riot, and that all are acquitted by this Court. On the other Side it was said, That the Assault and Battery is charged in the Indictment as well as the Riot; and the Defendants may, as they are found, be guilty of that.

See per Holt C. J. A Riot is a specific Offence, and the Battery is not laid as a Charge of itself, but as a Part of the Riot; for the Riotous & Routs runs thro' all, and is ascribed to the Battery as well as the Assembly. The Consequence is, That these Defendants being discharged of the Riot, are discharged likewise of the Battery; and no Judgment can be given; and Judgment was arrested.

Domina Regina *versus* Soley & al. Trin. 6 Ann. B. R.

Unlawful Assembly necessary to a Riot.
Vide Hawk P. C. 155, &c.
Pop. 121.
2. and 67.
Moor. 636.

INFORMATION that the Defendants tiel jour & lieu Ballivum & Burgenses de Bewdley in Goshalda Burgi prax. assemblat. ad eligend. ballivum burgi praxict. pro Anno tunc prox' sequent. deservitur' in electione praxict. procedere vi & armis clamoribus & vociferationibus illicite riotose & routouse impediverunt. The Defendants were found guilty, and upon Motion in Arrest of Judgment it was held noli. Because it did not appear that any Right is claimed, nor any such Franchise pretended to, so that they might be doing an unlawful Act; but if they had showed a Right to this Franchise, this might be a Disturbance to them in the Use of it, and to disturb another in the Use of his Franchise, is an unlawful Act. Vide 29 E. 3. 18. This is a Riotous. Vide Reg. 94. Ass. 424. Rast. 662. 200. Because it is not said that the Defendants unlawfully assembled; for a Riot is a compound Offence. There must be not only an unlawful Act to be done, but an unlawful Assembly of more than two Persons.

Domina Regina *versus* Soley & al. Trin. 6 Ann. B. R.

Unlawful Assembly necessary to a Riot.
Vide 3 Inst. 176.
Hawk P. C. 155, &c.
Pop. 121.
2. and 67.
Moor. 636.

INFORMATION that the Defendants illicite riotose & routouse assemblaverunt ad pacem perturband. & vi & armis ostium cujusdam Domus vocat. the Guild-hall Burgi de Bewdley, clausum existen. de cardinibus riotose & routouse elevaverunt. The Defendants were convicted, and upon Motion in Arrest of Judgment it was held noli, because it did not appear whose House it was: If it was the Defendants it was not an unlawful Act. Every Franchise must arise from an unlawful Act. It is said to be vocat. the Guild-hall Burgi, but saying it to does not make it so: The Guildhall may belong to a private Person as well as the Town. Per the Chief Justice thought

Riots, Routs, and unlawful Assemblies. 525

thought an Assembly might meet together with such Circumstances of Terror as to be a Riot: he called it a Kind of Assault upon the People. Vide Hob. 91. 1 Mod. 73. West. Preced. 149. Lamb. 5 Co. 91. b. 108. 3 Keb. 623. 1 Ro. Rep. 49.

Domina Regina *versus* Ellis. 6 Ann. At Nisi Prius in Middlesex, coram Holt C. J.

INDICTMENT against four Defendants, for that they did riotously assemble, and Vi & Arms beat and wound one Ellis. Upon Non cul. it appeared at the Trial, that Ellis who was the Enfield Stage Coachman driving to London in the Highway, the Defendants, one in a Chaise, and the rest on horse-back, over-took him, and that the Chaise was over-turned by the Coach, but not through any Fault of the Coachman; but that the Driver of the Chaise and his Company taking Offence at it, followed the Coachman and beat him barbarously. It was objected upon this Evidence, that this was a Trespass, but not a Riot, because the Company was lawfully assembled. Et per Holt C. J. 1st, If several are assembled lawfully without any evil Intent, and an Assault happens, none are guilty but such as act; but if the Assembly was originally unlawful, the Act of one is imputable to all.

2dly, If three, or more, are lawfully assembled, and quarrelling, all fall upon one of their own Company, this is no Riot; but if it be on a Stranger, the very Moment the Quarrel begins, they begin to be an unlawful Assembly, and their Concurrence is Evidence of an evil Intention in them that concur; so that it is a Riot in them that act, and in no more. So ruled, and so found by the Jury.

(5)
If three, or more, assembled lawfully, and quarrelling, fall upon one of their own Company, this is no Riot; if on a Stranger it is, but in those only who concur. See 1 Mod. 13. cont. 2 Keb. 558. 6 Mod. 433. 141, acc.

Vide Tit
Motion.

Rules of Court.

Sir James Butler's Case. Mich. 8 Will. III. B. R.

(1)
Defeating a
Rule of Court
by a Stranger,
is a Con-
tempt.

UPON a Rule of Reference to Arbitrators, they make an Award for the Plaintiff, and a Stranger by Contumace defeats the Party of the Benefit of this Award; Per Cur. It is a Contempt to the Court, and an Attachment shall be granted; for it shall not be in any one's Power to defeat the Rules of this Court, or render them ineffectual.

Anonymus. Mich. 8 Will. III. B. R.

(1)
Contrived
largely.

IF a Man enters into a Rule in B. R. not to sue Execution upon a Judgment, and brings an Action of Debt upon the Judgment, 'tis a Breach of the Rule. Per Cur.

Gregg's Case. Pasch. 5 Ann. B. R.

(3)
Where an
Administra-
tor sues, can-
not bring
Money into
Court.
See 6 Mod.
11, 25, 101,
153.
Ante 593.
H. 2 Ann. C.
B.
Money may
be brought
into Court:
In Covenant
for Rent,
Debt for
Rent,
Replevin and
Avowry for
Rent.
Vide ante
593.

PER Holt C. J. at the Sittings in Guild-Hall, in an Action by an Administrator: The Defendant cannot bring Money into Court, because the Administrator is not by Law to pay Costs, and Pasch. 5 Ann. B. R. in Gregg's Case, an Action was brought by an Executor for Money due to his Testator for Law-business done by him, 'twas moved to bring so much Money into Court, but denied.

Covenant and Breach for Non-payment of Rent, and for not repairing, &c. 'twas moved to bring in so much for the Rent; and as to the other Breach, that the Plaintiff might proceed as he thought fit. Et per Trevor, All the Judges have agreed, (for he put the Case to Holt C. J.) that it is but reasonable to allow it: That it does not differ from Debt for Rent; for tho' it be Covenant, yet it is a Covenant for Payment of a Sum certain. The same Diversity was taken, between Covenant for a Sum certain, and chose incertain, per Holt C. J. Hill. 9 W. 3. B. R. saying it did not differ from an Indebitatus Assumpsit. Et Trin. 12 W. 3. B. R. same Rule.

In

In a Quantum meruit bringing Money into Court was denied. *Quantum meruit.*
Hill. 8 W. 3. B. R. But Pasch. 5 Ann. B. R. it was allowed, ex
motione Magistri Raymond.

In Trover for a Horse, Bridle and Saddle, 'twas moved to
bring the Saddle and Bridle into Court; but denied Trin. 2 Ann.
B. R. Wilcocks the Attorney's Case.

Replevin, Defendant abows for Rent, and Plaintiff admitted
to bring it into Court. Hill. 10 W. 3. B. R.

In Ejectment upon an Entry for Non-payment of Rent, the
Court said all Proceedings upon bringing all the Rent into
Court, and accepting a new Lease and sealing a Counterpart.
Downes versus Turner. Mich. 8 W. 3. B. R.

In Debt for Rent, 'twas moved to bring so much into Court,
and Holt C. J. thought it hard; he said he remembered the Begin-
ning of these Actions; the first was to bring in Principal and In-
terest upon a Bond; after that it came to an Indebitatus Assumpsit:
It has been done in Debt for Rent, but not so freely; we do it
in Ejectment on a special Reason, viz. because that Action subsists
intirely upon the Rules of the Court. Per Holt C. J. Pasch. 10
W. 3. B. R.

In Debt upon a Bond; Defendant must bring in the whole
Penalty, or the Court will not stay Proceedings. Hill. 9 W. 3.
B. R. But semble ne poet estre without bringing in the whole
Money. If the Parties dispute the Quantum, and there is a Dis-
pute how much is due, ne poet estre referre. Trin. 11 W. 3. B. R.

Elliot *versus* Callow. Mich. 9 Ann. B. R.

DEFENDANT brought Money, viz. 10 l. into Court, and
had it struck out of the Declaration: Afterwards the Plain-
tiff suffered a Nonsuit; and the Question was, Whether he should
be allowed to take this Money? Et per Cur. He shall; for so much
the Defendant has admitted to be due, and so much he has actual-
ly paid him; and if the Cause had gone on to Trial, there must
have been a Verdict for the Plaintiff as to so much, for this is
admitted to be due and paid down as the Plaintiff's Money;
otherwise perhaps of Money paid into Court by Way of Tender.
If a Man pleads a Tender & uncore Prist, and pays the Money
into Court, and the Plaintiff takes Issue on the Tender, and it is
found against him, the Defendant shall have the Money. Sry. 388.

(4)
Tho' Plain-
tiff is nonsuit,
yet he shall
have Money
brought in
upon striking
it out of the
Declaration.

SCIRE FACIAS.

Panton *versus* Hall. Trin. 1 W. & M. B. R. Rot. 130.

(1)
Judgment a-
gainst two;
Scire facias
against one,
ill.
Vide post
691.
Farell. 3, 4, 6.

A Judgment in Debt was recovered against A. and B. and a Scire facias awarded against the Certenants and the Debt of B. The Sheriff returned a Scire faci as to the Debt, and returned several Persons Certenants in balliva sua, warned; they appear and plead in Abatement, no Scire facias had been awarded against A. The Plaintiff replied, That he at first a Certe sued out a Scire facias against A. and set it forth. This Replication was held naught on Demurrer, for a Scire facias is a judicial Writ, and must pursue the Nature of the Judgment; therefore as the Judgment is joint, so ought the Scire facias, whereas here they are as several independent Suits, 1 Ro. 276. 20 H. 7. 3. Cro. Car. 517.

Return of
Sci. faci a-
gainst Ter-
nants ought
to be of all
the Ter-
nants in bal-
liva sua.

ably, The Return is ill, for it should not be, that A. B. and C. are Tenants of Lands in balliva sua, but A. B. and C. are Tenants of all the Lands in balliva sua.

Tully's Case. Hill. 6 Will. III. B. R.

(2)
Error to re-
verse a Fine.
3 Mod. 274.
1 Salk. 339.

In Error to reverse a Fine, tho' in Strictness of Law a Scire faci being returned against the Comtees, is sufficient; yet for that of Partisators, and in favour of them, there shall be a Scire facias against the Certenants.

Hardisty *versus* Barny. Hill. 7 Will. III. B. R.

(3)
Where Scire
facias shall
issue on Mo-
tion, and
where with-
out.

If a Judgment be above ten years standing, the Plaintiff cannot sue a Scire facias without Motion in Court; if under ten, but above seven, he cannot have a Scire facias without a Motion at Side-Bar. Note, If after such Motion and Judgment revived by Scire facias, the Defendant dies before Execution, the Plaintiff must sue a new Scire facias, but may have it without Motion; for the Judgment was revived before. Per Cur'.

Ano.

Anonymus. Trin. 8 Will. III. B. R.

IN C. B. there is but one Scire facias, and upon Nihil returned Execution. In the King's Bench there are two Scire facias's and two Nihils returned, and heretofore both were sued out together by making the Teste of the Second as if the First were returned; but now the Court made a Rule that both should not be sued out together, but the First should be duly returned before the Second should be sued out, and that the Second should be tested the Day of the Return of the First.

(4)
Rule for suing out and returning Scire facias. Farell 5, 6, 47; 68, 69, 138. 6 Mod. 86. & infra Pl. 7. & 12.

Lugg *versus* Goodwin. Mich. 10 Will. III. B. R.

A Scire facias upon a Judgment against the principal Defendant was, in hac parte. Et per Holt C. J. on Search of Precedents, Where it is against the Defendant himself, it should be in hac parte; Where against the Bail, in ea parte, and this will reconcile the Precedents.

(5)
Against Principal in hac parte, and Bail in ea parte.

Anonymus. Trin. 11 Will. III. B. R.

A Capias ad satisfaciendum against the Principal in order to charge the Bail must lie four Days exclusive in the Sheriff's Office, but there is no set Time for a Scire facias: Same Rule laid down Mich. 10 W. 3. B. R. But a Scire facias against Bail must lie a convenient Time, and the first Scire facias may be antedated even till Term-time, per Clarke Sergeant. Sed per Holt C. J. It cannot be antedated where it issues by Rule of Court.

(6)
Scire facias against Bail must lie in the Sheriff's Hands a convenient Time.

Goodwin *versus* Peek. Mich. 11 Will. III. B. R.

The first Scire facias was tested the 24th Day of October, and returnable the 31st Day of October; the Alias was tested the same Day, returnable the 7th Day of November. Shower objected, there ought to be fifteen Days exclusive between the Teste of the first and Return of the last: But the Court held, that here being fifteen Days inclusive, 'twas very well, and the Practisers agreed it. Vide 2 Jones 228.

(7)
Fifteen Days inclusive between Teste of first and Return of last, sufficient. Vide Post. 602. 1 Lutw. 28.

Proctor

Vid. 3 Lev.
105.
Lutw. 1268.

Proctor *versus* Johnson. Pasch. 13 Will. III. B. R.

(8)
Scire facias
lies on a
Judgment in
Ejectment.

ON a Judgment in Ejectment in C. B. a Scire facias was brought against the casual Ejector, suggesting, that since the Judgment A. and B. ingressi sunt & modo tenent. And on Demurrer, Judgment given quod haberet Execution, and upon this Award of Execution a Writ of Error was brought in B. R. where the Objection was, That a Scire facias lay not on a Judgment in Ejectment, for at Common Law it lay only in real Actions; and the Statute gives it only in personal. Vide 2 Inst. 469. Et per Holt C. J. 1st, At Common Law there was a Scire facias on a Judgment in real and mix'd Actions: It lay on a Judgment in Assise, for the Land was bound by the Recovery, which was a good Title, and there was no other Way to execute the Judgment upon Change of Parties, as there was in Case of Judgment for Debt and Damages, where Debt lay on the Judgment.

Writ general.

2dly, The Scire facias may either be general against all Certe-
nants, or against the Tertenants, naming them.

3dly, That Strangers may falsify, but those that claim under
the Judgment are estopped and bound by the Judgment.

S. C. 1 Silk.
258.

Withers *versus* Harris. Mich. 1 Ann. B. R. (Vide *this Case*, Title Ejectment, pl. 11.)

(9)
Whether Scire
facias lay
in personal
Actions be-
fore West. 2.

IT was said by Holt C. J. I am not satisfied with the Opinion
of my Lord Coke on West. 2. that at Common Law no Scire
facias lay on a Judgment in a personal Action, till West. 2. for
the Words sine alia quacumq; irrotulata came after contractus and
conventiones, and therefore cannot be construed of Judgments,
but the Law has been otherwise taken, and I must submit; 'tis
plain it lay on a Judgment in Annuity.

S. S. ante 564.
Post. 659.
6 Mod. 132.

Shuttle *versus* Wood. Mich. 2 Ann. B. R.

(10)
Scire facias
against Bail
in B. R. must
be brought
in Middlesex,
and not else-
where.

Lutw. 1286.
3 Lev. 235,
245.
Cro. Jac. 331.

ON a Recognizance taken in B. R. the Scire facias must be
brought in Middlesex; for the Recognizances there are not
obligatory by the Caption, but by their being entered of Record
in the Court: So 'tis of Debt: But on a Recognizance in C. B.
the Scire facias may be laid in the County where the Caption was,
or in Middlesex where 'tis filed; for 'tis a Record by the Caption and
becomes immediately obligatory, and therefore may be brought
there; and 'tis also filed at Westminster in C. B. and there re-
mains of Record. Vide Al. 12. 1 Cro. 312. Hob. 195.

Adams and Tertenants of Savage. Mich. 3 Ann. B. R. S.C. 1 Salk 40. & Post. 679.

A Administrator brought a Scire facias on a Judgment recovered by his Intestate against H. and the Writ was general against such as were Tenants of the Land of H. at the Time of the Judgment. The Sheriff returned several Tertenants warned; among the rest one A. seised of a Messuage and of a Manor called D. The Tenants appear, and all join in this Plea, viz. That J. S. is seised of the Freehold of the Manor of D. & petitum judicium de brevi, & quod breve ill. cassetur. Et per Curiam, The Plea was held ill, and resolved:

1st, That the Tertenants cannot join in this Plea, because they are severally returned, one for one part, and another for another.

2dly, This is pleading a Non-tenure by Implication as to the Manor of D. Now in a Scire facias on a Judgment in Debt, or any personal Action, the Defendant cannot plead Non-tenure generally, because 'tis contrary to the Return of the Sheriff, but he may plead a special Non-tenure in such Case; and so the Law is now after long and great Difficulty settled. 3 Cro. 872. 8 E. 4. 19. 9 H. 5. 11. But in a Scire facias for Execution in a real Action, the Defendants may plead a general Non-tenure; because their Freehold, which is much favoured in Law, is in question.

3dly, The Tertenants in this Case may plead there be other Tertenants not named in the same County, and pray Judgment if they ought to answer, quousque the others be summoned, but ought not to pray, quod breve cassetur; for the Court ought never to abate the Writ, but where the Plaintiff can have a better Writ; otherwise if the Writ had been particular in naming the Tenants. Vide 2 Saund. Jeffreyson versus Dawson, a good Precedent: And they seemed to doubt whether the Tertenants could plead other Tertenants not warned in another County; and the Chief Justice cited Owen 104. that Tenant for Years may be a good Tenant to plead in Bar to a Scire facias to a personal Action where Damages are recovered, but not in a real Action. Vide Co. Ent. 702. 634. 2 Cro. 506. Cro. El. 740. 2 Saund. 8. Palm. 241. 2 Ro. Rep. 53.

(11)
Tertenants return'd for several Parts cannot join in a Plea, which goes to one part only. See before 598. Pl. 1. 2 Saund. 43.

Where Non-tenure may be pleaded generally or specially. Vide ante 569.

2 Saund. 43.
1 Mod. 29.
1 Sid. 436.
2 Keb. 529, &c.

Ball versus Manncaptors of Russel Trin. 4 Ann. B. R.

(12)
Scire facias
on Recogni-
zance of Bail
assigning
Breach, that
the Defen-
dant did not
pay nor ren-
der Prisoner
Mar. Ma-
resch nostræ,
sufficient.
Vide Lutw.
1273.

SCIRE FACIAS against Ball, setting forth, quod cum quo-
rens recuperasset against one Russel, and the Defendants de-
venerunt plegii, that he should either pay vel se reddere prisonæ
Maresc. Mareschal. nostræ. The Defendant prayed Oyer of the
Recognizance; and that was, That he should pay, vel se reddere
prisonæ Mareschalli Mareschallie Domine Regine coram ipsa Re-
gina, quo lecto & audit. the Defendant pleaded, that there was no
Capias ad satisfaciend. returned against the Principal; the Plaintiff
replied, there was a Capias ad satisfaciend. and set it out; the De-
fendant demurred: It was objected by Pengelly, That the Oyer
given was defective, not shewing of what Term the Recogni-
zance was, so that it did not appear to warrant the Scire facias, or
that it is what the Scire facias is brought upon: That the Capias
set forth appears to have but four Days between the Teste and
Return, and that there is no Breach assigned by the Scire facias,
for the Render by the Recognizance ought to be to the Marshal
of the King's Bench Prison; but the Breach is, That he did not
render himself Prisoner Mareschalli Mareschallie nostræ, which is
the Prison of the Palace. Vide 10 Co. 68. b. Thel. Br. 233. N. Br.
251. J. 5 E. 3. c. 8. and Spelm. Gloss. in hoc verbo. To this it was
answered and resolved by the Court:

1st, That tho' the Oyer be imperfect, yet there is no Variance
between the Scire facias and Recognizance, and since they agree
together, the Recognizance is a sufficient Ground for the Scire
facias; but the Defendant should not have gone on, but insisted
upon his Want of Oyer.

Eight Days
must be be-
tween the
Teste and Re-
turn of Capi-
as ad satisfaci-
end. against the
Principal in
order to
charge the
Bail.

Vide ante
599. Pl. 7.
Farell. 40,
96, 138.
1 Lutw. 26.
Q. 6 Mod. 86.

2dly, There ought to be eight Days between the Teste and
Return of the Capias ad satisfaciendum against the Principal, by
the Practice and Course of the Court; and if the Defendants had
moved for the Irregularity, the Court would have helped them:
But in Point of Law, the Process of this Court may be re-
turnable de die in diem, especially into Middlesex; and therefore
they shall not take Advantage of this which is but an Irregulari-
ty, upon Demurrer.

3dly, All other Marshalseas were derived from the Earl Mar-
shal of England, and the Marshal of the Household is never styled
Mareschallus Mareschallie nostræ; and this being a Scire facias
on a Recognizance of Bail taken here, the Marshal here must be
intended the Marshal of this Court. Judicium pro quer'.

Attwood *versus* Burr. Pasch. 5 Ann. B. R.S. C. ante 89.
Farrell. 3.
Mod. 397.

A Writ of Error was brought upon the Award of Execution on a Scire facias against Bail, and thereupon the Record of the Judgment against the Principal was also returned: It was assigned for Error, that the Scire facias was sued out and prosecuted by J. S. his Attorney, but no Warrant of Attorney entered of Record. It was answered, That J. S. appears to have been the Attorney in the principal Cause, and in that to have had a Warrant, but the Court reversed the Judgment; for the Record against the Principal need not have been certified upon this Writ of Error, and the Suit against the Principal was another distinct Suit: therefore there ought to be a particular Warrant of Attorney for this Scire facias against the Bail, and this Warrant ought to be entered, not before the writ ish, for any Body may sue out the Scire facias; but upon the Return thereof, for when the Suit commences,

(13) Judgment on a Scire facias against Bail recorded for want of Warrant of Attorney.

Delivered at the Court of Common Pleas, the 19th of May, 1704.

Anonymous. Pasch. 5 Ann. B. R.

In the Case of the King there need not be any Scire facias after the Return.

(14)

Two Writs of Error were brought upon the Award of Execution on a Scire facias against Bail, and thereupon the Record of the Judgment against the Principal was also returned: It was assigned for Error, that the Scire facias was sued out and prosecuted by J. S. his Attorney, but no Warrant of Attorney entered of Record. It was answered, That J. S. appears to have been the Attorney in the principal Cause, and in that to have had a Warrant, but the Court reversed the Judgment; for the Record against the Principal need not have been certified upon this Writ of Error, and the Suit against the Principal was another distinct Suit: therefore there ought to be a particular Warrant of Attorney for this Scire facias against the Bail, and this Warrant ought to be entered, not before the writ ish, for any Body may sue out the Scire facias; but upon the Return thereof, for when the Suit commences,

Vol. II. 2. E. 2. 4

Service and Suit.

Tomkins *versus* Crocker. Pasch. 2. Ann. B. R.

Service by
doing Suit to
the Court of
a Manor
twice a Year.

In Replevin, the Defendant made Conuſance for Fealty, Rent, and Suit of Court, and the Suit of Court was laid to be Suit to the Court of a Manor twice a Year: The Plaintiff conuſing a Tenure by Fealty and Rent, transferred the Tenure by Fealty and Rent and Suit to the Court of the Manor twice a Year. The Jury found there was but one Freeholder Tenant of the Manor, and that Time out of Mind an ancient Court had been held before the Steward, and that ſeveral Freeholders, Tenants, did Suit to it, and that the Plaintiff held by the Service of doing Suit ad Cur. Man. præd. bis in anno apud Man. præd. M^r. Raymond objected, That the Court found by the Jury, is not the Court claimed by the Conuſance; for Curia Manerii is the Court Baron, which is Incident of common Right, and therefore no Title need be made for it, nay it cannot be preſcribed for; whereas this Court here found is a ſpecial cuſtomary Court, for which he ought to make Title in his Conuſance, and not a Curia Manerii. Vide 1 Inſt. 38. 2 Inſt. 99. 1 Inſt. 268. Noy. 20. Et per Holt C. J. and Powell J. As a Court of Pie-powders may be to hold Plea of Things out of the Market, and yet is a Court of Pie-powders; ſo may a Court of a Manor be more than a Court for Suits every three Weeks, and yet be a Court of a Manor: There may be a Manor-Court to be held before the Steward bis in anno. Vide 1 Leon. 316. And it is to enquire of Arrearages of Rents and Services: And the Suit to ſuch Court ſhall be intended by Reſervation before the Statute of Quia emptores terræ. Vide 12 H. 7. 18. One that is not poſſant may be bound to do Suit real; for it ſhall be intended a Suit-Service reſerved on creating the Tenure: And the Court held in the principal Caſe, That the Suit ſet forth in the Conuſance was expreſſly found by the Special Verdict.

Sessions General and Quarter.

Vide ante
470, 474, 475,
476, 477, 479,
480, 481, 490,
491, 494.
5 Mod. 329.
2 Hawk P.
C. cap. 8.

The Case of the Parish of King-Langley. Trin.

11 Will. III. B. R.

A Motion was made to quash an Order of Sessions, because the Justices had adjourned the Appeal from one Sessions to another, and so the Determination upon the Appeal was not at the next Quarter-Sessions: Sed non allocatur: For the Appeal must be lodged at the next Quarter-Sessions, yet when it is lodged, the Justices may adjourn it. Per Cur.

(1)
Appeal may be adjourn'd from one Quarter-Sessions to another.
Vide ante 494.
Post 606, 608.

Inter the Parishes of Linfield and Battle. Pasch. 1 Ann. B. R.

CAPTION of an Indictment at Sessions was, Sessione vicefimo & vicefimo octavo die Julii, &c. Et per Holt C. J. It is naught, for tho' a Sessions may adjourn from one Day to another, and so sit by Adjournment, yet it must not appear in a Lump, as sitting three Days together, but distinctly.

(2)
Sessions cannot be entered as sitting three Days together.
Ante 494.
Post 606, 608.

Domina Regina versus Savin. Pasch. 2 Ann. B. R.

A Order of Sessions was made, that the Clerk of the Peace should prosecute an Indictment of Barrettry found against J. S. and that the Charge be allowed out of the County-Stock. Note. By 43 Eliz. c. 2. The Justices have Power to dispose of the Surplus to charitable Uses; upon which Clause it was offered to maintain this Order: But the Court said this was not to take Place out of the Surplus, but out of the original Stock; besides, a Gift of Lands to raise Money to prosecute Offenders, would not be good as a charitable Use.

(3)
Sessions cannot make an Order to prosecute an Offender out of the County-Stock.

Anonymus. Mich. 2 Ann. B. R.

(4) **W**HEN a Statute gives a Penalty to be recovered before Justices of Peace, and prescribes no Method, it ought to be by Bill. Per Holt C. J.

Inter the Inhabitants of St. Andrew's Holborn and St. Clement Danes. Mich. 3 Ann. B. R.

(5)
Sessions may
alter and sit
aside their
own Orders
the same Ses-
sions.
Ante 494.
605.
Post 608.
6 Mod. 287.

UPON a Certiorari the following Orders were removed in-
to B. R. 18. An Order made at the General Quarter-
Sessions of Middlesex, 1754. Which recited an Appeal made at the
General Sessions of the Peace for the County of Middlesex in September
1754. by the Parish of St. Clement Danes, against an Order of
two Justices, to remove one Mary Gear from St. Andrew's Hol-
born to St. Clement Danes, as the Place of her last legal Set-
tlement; and that it was thereupon ordered, That the said Appeal
should be determined such a Day this Sessions, and that the
Churchwardens, &c. of St. Andrew's Holborn should then at-
tend, and then went on and ordered, That forthwith as it ap-
peared to the Court upon Oath, That a Copy of the said recited
Order was served upon the Churchwardens, &c. of St. An-
drew's Holborn; and by that the Churchwardens, &c. of
St. Andrew's Holborn had neglected to attend, the Court allowed
the Appeal. 10th. An Order which recited, That whereas the
Churchwardens, &c. of St. Andrew's Holborn had then paid in
open Court to the Churchwardens of St. Clement Danes 40 s.
Costs allowed to them, because the Churchwardens of St. An-
drew's Holborn neglected to attend, upon which the Appeal was
allowed, and the Order of the two Justices vacated; and then
ordered, That for good Reasons given unto this Court. It is
ordered that the said recited Order of this Court made on Mon-
day last, be vacated and discharged, and that the said Appeal be
reheard. 3d. An Order setting forth, That upon hearing the
Appeal at St. Clement Danes, it not appearing that Mary Gear
had any legal Settlement in St. Andrew's Holborn, or elsewhere,
save in St. Clement Danes, this Court doth dismiss the said Ap-
pel, confirm the Order of the two Justices, and order the said
Mary Gear to be continued in St. Clement Danes. 18th. Darnel
moved to quash the second and third Orders; he argued, That
the Hands of the Court were tied up by the first Order of Ses-
sions; sed tota curia contra; and Holt C. J. That during
the Sessions, the Order was in the Breast of the Court, and
tho' it was drawn up, yet it was so far in the Breast and Power
of

of the Court, that by the second Order it ceased to be a Record. The Court at the Old Bailey have altered and set aside their Judgments ten Times the same Sessions; where Judgment de pain fore & dure has been given, the Court have after let him in to plead, and after upon his Trial he has been convicted, and has had another Judgment against him to be hanged: So it is of Judgments here, which during the same Term are in the Breast of the Judges; but then he said, they ought to set the first Order wholly aside, and have entered up the third Order as the only Order; for the Effect of the Court's setting aside of the first Order is, That it ceases to be an Order, and consequently ought not to be returned to us as an Order vacated by another Order, but it should have been annulled and made nothing: As in this Court we cannot enter up one Judgment upon Record, and then enter a Vacat of that, and then enter a contrary one: The Sessions as well as the Term is but one Day in Law. But the Matter was referred to the three puisne Judges, & sic quievit.

The Case of Foxham Tithing in Com. Wilts.
Hill. 3 Ann. B. R.

A Justice of Peace was Surbeyor of the High-way, and a Warrant which concerned his Office coming in question at the Sessions, he joined in making the Order, and his Name was put in the Caption. *Ex per Holt C. J.* It ought not to be, as if an Action be brought by the Chief Justice of the Common Pleas in the Court of Common Pleas, the Placit must be coram Edro Drivil Mil, & Sociis suis, and not coram Thomas Trevor, &c. And it was so.

(6)
Order of Sessions qualified, because it concerned one of the Justices named in the Style of Court.

Inter the Inhabitants of the Parishes of South Cadbury and Beaddon in Com. Somerset. Mich. 9 Ann. B. R.

On an Appeal to the Sessions the Court discharged the first Order, and now Earl moved to set aside the Order of Discharge, because the Justices do not say whether they discharge it for Form, or on the Merits; for if it was for Form, the Parish is not bound, but if on the Merits, the Parish in consequence is thereby discharged for ever. *Ex per Curiam.* The Justices are not bound to express the Reason of their Judgment in the Judgment, no more than other Courts, and it was otherwise held in the late Chief Justice's Time, it past without due Consideration. The Reason of their Judgment must be collected from the Record; as where Judgment is arrested upon an insufficient Indictment.

(7)
The Sessions need not set forth the Reason of their Judgment.

Orders re-
vers'd, ante
472, 486,
493, 494.
6 Mod. 287.

If the Sessions reverse the first Order, and that being removed appears to be good, this Court must intend it was reversed on the Merits, and affirm the Order of Sessions.

If the Sessions reverse the first Order, and that being removed, appears not to be good, we must intend it was reversed for Form, and affirm the Order of Reversal.

So if the Sessions affirm the first Order, and that appears to be good, we must affirm the Order of Sessions.

But if the first Order appears bad and the Sessions affirm it, this Court must reverse it, because it appears naught.

SHERIFFS.

Vide 10 Co.
99. 100.
1 Silks 99, 175.

Sheriff may
take Bail of
Bond on an
Attachment
of Contempt,
but the Pro-
secutor may
refuse to ac-
cept it.

Dominus Rex versus Daws. Hill. 13 Will. III. B. R.

DAWES was taken upon an Attachment for a Contempt die veneris prox post Crastin. Sanctæ Trin', and the Sheriff took a Bail-Bond for his Appearance, and suffered him to be at large: Daws would not appear, the Sheriff was amerced. The Prosecutor refused to accept the Amalgamation of the Bail-Bond; and Raymond moved, That farther Amercements might be stayed, and that the Prosecutor might accept of the Bail-Bond, which was but in 40 l. and the Prosecutor thought it too little: He urged, the Sheriff was bound by the Statute to bail and set him at large, and cannot seize him after the Return; he has done all he can, and ought not to be amerced for not doing more than he can. No Action lies against him in such Case, there ought for the same Reason to be no Amercement: The Court agreed, That a Bail-Bond may be taken on an Attachment, but said they could not oblige the Plaintiff to accept the Bail-Bond, it might be insufficient; if it was, the Sheriff might thank himself; if it be sufficient, he may by suing the Bail-Bond, reimburse himself.

I

Statutes

Statutes in General, and the Exposition thereof.

Secalnst 301.
2 Leon. Cal.
114.
3 Co. 13.
Vaugh. 169,
170, 373.
Ray. 54, 191,
355, 356.

Rex & Regina *versus* Barlow. 5 W. & M. B. R.

INDICTMENT on 14 Car. 2. c. 12. against Church-war-
dens and Overseers, for not making a Rate to re-imburse
the Constables: Exception was taken, That the Statute
only puts it in their Power to do so by the Warrant may, &c.
but does not require the doing of it as a Duty, for the Omission
of which they are punishable: Sed non allocatur; For where a
Statute directs the doing of a Thing for the sake of Justice or the
publick Good, the Warrant may is the same as the Warrant shall;
thus 23 H. 6. says, the Sheriff may take Bail, this is con-
strued, he shall; for he is compellable so to do.

(1)
Where a Sta-
tute directs a
Thing of a
publick Na-
ture, may is
understood
as shall.
Q. Cro. Jac.
134. 3. 1.
Cro. El. 655.
2 Inst. 118.

Bennet *versus* Talbot. Hill 8 Will. III. B. R. Vide
Title Declaration, pl. 2. pag. 212.

(2)

Mills *versus* Wilkins. Hill 2 Ann. B. R.

Vide 6 Mod.
62.
2 Hawk. P.
C. 247.

TRIBSPASS for taking several Shins from the Plaintiff;
The Defendant as an Officer justified on 1 Jac. 2. c. 22.
about Tanning; and set forth the Title of the Statute, making a
Warrant, by which it varied from the true Title, and altered the
Shins were not defined according to the words of the Statute;
to which it was demurred, because no such Statute was then in force.
Vide Cro. Car. 232. 3 Keb. 648. On the other side it was an-
swered, That the Title is no part of the Act; that old Statutes
have no Title; and the Opinion of Hale & Bacon was cited.
Hard. 194. Vide Hunt 155. Hob. 310. 11 Co. 33. 4 Inst. 245.
Holt C. B. The Title is not a material Part, neither is it ne-
cessary to set it forth; but yet it is a Name given by the makers,
and therefore you must describe it accordingly if you will describe
it by its Title; and they denied the Opinion of my Lord Hale,
saying, It was a sudden Opinion, Judgment for the Plaintiff.

(3)
Title no part
of Statute,
but if set out
wrong, is fa-
tal.
Vid. 4 Co. 48.
Cro. Car. 232.
1 Jon. 50.
Cro. Jac. 140.
Ray. 191, 192.

Domine

Statutes,

Statutes, and the Exposition thereof.

S. C. 1 Show. Hobbs *qui tam* versus Young. Trin. 3 W. & M. B. R.
241. Intr. Hill. 1 W. & M. Rot. 129.

(1)
Exercising a
Trade by
others is
within the
Stat. 5 Eliz.
Vid. Post. Pl.
2, 3, & 7.

DEBT on 5 Eliz. for using the Trade of a Clothworker, not being brought up an Apprentice; upon Nil debet the Jury found, That the Defendant was a Turkey-Merchant, and exported Woollen-Manufacture into Turkey, and that he employed Clothiers that had served Apprenticeship to work the Cloths in his own house, at his own Charge, and with his own Materials, which he sent into Turkey as Merchandize, but that the Defendant never served an Apprenticeship. Per Cur. 1st. The Defendant is the Trader in this Case, and the Person that exercises the Trade, because he employs the rest, who work but as his Servants, and the Loss and Gain is to be his.

2dly, This is a Trading within the Statute, because the Cloth is not confined to the Use of his own Family, but vended out for the sake of Commerce, and whether he utterance be in England or in Turkey, is not material.

3dly, That he that hath not served an Apprenticeship is by this Statute restrained to work as a Trader, either by himself or others; for the Intent of this Act is to annex the Benefit of Trade to such as undertake the Partnership of Learning it, thereby to encourage Labour in Parishes, and lest they undergo the Trouble of being Apprentices, if they might employ others to work for them.

4thly, This is a negative Statute, and no one shall exercise a Trade against it, unless by Virtue of a Custom, as the Widows of Tradersmen, who by Custom carry on the Trade of their husbands, which the Court held not within the Statute. Hutt. 1911 Nov. 5. 1 Saund. 912. 2 Bull. 191. Gro. Cat. 346.

5thly, This is a Statute, and no one shall exercise a Trade against it, unless by Virtue of a Custom, as the Widows of Tradersmen, who by Custom carry on the Trade of their husbands, which the Court held not within the Statute. Hutt. 1911 Nov. 5. 1 Saund. 912. 2 Bull. 191. Gro. Cat. 346.

Dominus Rex *versus* Paris Slaughter. Hill.

11 Will. III. B. R.

BRODERICK moved to quash an Indictment on 3 Eliz. c. 4. for using the Trade of a Schoolmaster, not having been an Apprentice seven Years; he urged, That this was a Business required no Skill, for it was only to pull the Child from the Chute he cited 1 Cro. 499. Information for exercising the Trade of a Pinner, after repealed. One Pasch. 4 Jac. 2. for exercising the Trade of a Schoolmaster, quashed. Of a Pinner-monger otherwise. See per Holt C. J. In the Indictment it is charged to be a Trade at the Time of making the Statute, he will not quash it, for whether it was a Trade then or no, or whether any Skill be requisite to the Exercise of it, is matter of fact proper for the Trial of a Jury: And there are many Trades within the general Words and Equity of that Act, besides those that are mentioned therein. The Case of a Costermonger is not yet determined, and the Case of an Upholsterer 2 Bulst. 186. is not Law. The Court would not quash it.

(2) Indictment for exercising the Trade of a Pinner-monger contrary to 3 Eliz. not quashed, because aver'd to be a Trade at the Time of making the Act. Vide pl. 1. & 7.

Dominia Regina *versus* Harper. Trin. 4 Ann. B. R.

INDICTMENT for using the Trade of a Merchant-Taylor contrary to the Statute 3 Eliz. Serjeant Broderick moved to quash it, because it is not a Trade within the Statute. Quashed Nisi. Some Days after Mr. Eyre moved to quash an Indictment against Cornish, for using the Trade of a Seamstress, not having served as Apprentice, and the Court refused, because it was set forth in the Indictment to be a Trade in England at the Time of making the Act, wherein the Words are, Any Craft, Mystery or Occupation now used. So that if this Trade of a Seamstress be not within the Act, the Defendant would have the Advantage of it upon the Trial. But as to Harper's Case, which Mr. Eyre put them in mind of, the Court seemed to think a Merchant-Taylor was Bonfens and intelligible; they did not know what a Merchant-Taylor meant, and so it differed. It is a good exception that it is not proved in the Indictment, that the Trade therein mentioned was a Trade at the Time of making the Statute. Dominia Regina *versus* Cornish, eodem termino.

(3) Where the Trade is aver'd to be a Trade at the Time of the Act, the Court cannot intend it not within it.

Voluntas *De* *animos*

Billings *versus* Eads. Mich. 4 Ann. B. R.

(4)
H. may let
Coach Horses
and Coach
men without
a License.

of y^e same
year, and y^e
coachmen
may let
their horses
and coachmen
without a
license.

It is to be
understood
that the
coachmen
may let
their horses
and coachmen
without a
license.

TRESPASS and Special Verdict found; the Case was, A Defendant had a Coach and Drivers of his own, and gave on the 10th of 1751, for Answer to the Plaintiff a Pair of Horses and a Coachman. And the Question was, Whether he could so long detain a License to keep a Hackney Coach, upon the 6th W. 3. c. 2. 1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100. 101. 102. 103. 104. 105. 106. 107. 108. 109. 110. 111. 112. 113. 114. 115. 116. 117. 118. 119. 120. 121. 122. 123. 124. 125. 126. 127. 128. 129. 130. 131. 132. 133. 134. 135. 136. 137. 138. 139. 140. 141. 142. 143. 144. 145. 146. 147. 148. 149. 150. 151. 152. 153. 154. 155. 156. 157. 158. 159. 160. 161. 162. 163. 164. 165. 166. 167. 168. 169. 170. 171. 172. 173. 174. 175. 176. 177. 178. 179. 180. 181. 182. 183. 184. 185. 186. 187. 188. 189. 190. 191. 192. 193. 194. 195. 196. 197. 198. 199. 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800. 801. 802. 803. 804. 805. 806. 807. 808. 809. 810. 811. 812. 813. 814. 815. 816. 817. 818. 819. 820. 821. 822. 823. 824. 825. 826. 827. 828. 829. 830. 831. 832. 833. 834. 835. 836. 837. 838. 839. 840. 841. 842. 843. 844. 845. 846. 847. 848. 849. 850. 851. 852. 853. 854. 855. 856. 857. 858. 859. 860. 861. 862. 863. 864. 865. 866. 867. 868. 869. 870. 871. 872. 873. 874. 875. 876. 877. 878. 879. 880. 881. 882. 883. 884. 885. 886. 887. 888. 889. 890. 891. 892. 893. 894. 895. 896. 897. 898. 899. 900. 901. 902. 903. 904. 905. 906. 907. 908. 909. 910. 911. 912. 913. 914. 915. 916. 917. 918. 919. 920. 921. 922. 923. 924. 925. 926. 927. 928. 929. 930. 931. 932. 933. 934. 935. 936. 937. 938. 939. 940. 941. 942. 943. 944. 945. 946. 947. 948. 949. 950. 951. 952. 953. 954. 955. 956. 957. 958. 959. 960. 961. 962. 963. 964. 965. 966. 967. 968. 969. 970. 971. 972. 973. 974. 975. 976. 977. 978. 979. 980. 981. 982. 983. 984. 985. 986. 987. 988. 989. 990. 991. 992. 993. 994. 995. 996. 997. 998. 999. 1000.

Anonymus. Mich. 4 Ann. B. R.

(5)
Construction
of the Stamp-
Act.

and y^e same
year, and y^e
coachmen
may let
their horses
and coachmen
without a
license.

A Warrant of Attorney for entering up a Judgment was written upon a Paper, which likewise contained a Bond, and had only one Stamp, whereas by the Act concerning Stamp-Duties it might be had two Stamps: Judgment was entered up by Verdict of the Plaintiff. And now it was moved, That the Judgment and Execution might be set aside for this Cause. See per Cur. There may be Reason to refuse such a Warrant of Attorney in Evidence, but no Reason to make all void; for there is nothing in the Act that imports that.

Dunn *qui tam* *versus* Hinchdy. Pasch. 5 Ann. B. R.

(6)
Duty, for
Stat. 10 W.
3. c. 2.
Vide 3 Lev.
399, 374.

DEBT upon the Statute 10 W. 3. c. 2. for the Debt of Buttons, made de ligno tantum in Imitation of, &c. The Jury found the Buttons were all Wood and the Shank, which were Iron, and that they were made in Imitation, &c. and that these were Buttons made de ligno tantum, &c. Well said, That now it appears the Statute was applicable and might have its Effect upon other Buttons, and that a Penal Law was to be construed strictly and not by Intendment. Vide 2 Inst. 199. Pl. 47. a. But the Court resolved they were prohibited by the Act; for the Shank is no Part of the Button, but added to fasten it: And if Buttons thus made in Imitation, &c. by having a brass Shank added, should be out of the Act, it would be in every Body's Power to evade it. Adjudgen.

Domina Regina versus Maddox. Pasch. 5 Ann. B. R.

PER Cur. Upon Indictments on the Statute 5 Eliz. in Evidence we allow following the Trade for seven Years to be sufficient without any binding, this being a hard Law.

(7)
Exposition of
5 Eliz.
Vide ante pl.
1, 2, & 3.

Statutes of Hue and Cry.

P. C. 71, 72. 3 Inst. 68. Dalt. c. 100. Staund. P. C. 27. 1 And. 116. 2 Sid. 44.

Stat. of Win-
ton 13 E. 1.
c. 12. and 27
El. c. 13.
Vide Hale's
1 Sid. 139.

Ascomb versus The Hundred of Spelholm. Mich. 2 W. & M. B. R. Intr. Hill. ult. Rot. 901.

S. C. 1 Show.
94, 241.
3 Mod. 289.

AN Action was brought by the Master, for the Robbery of A. and B. his Servants: The Jury found the Special Matter, and that B. was a Quaker and would not take the Oath, viz. That he knew none of the Robbers. Et per Cur. 1st, The Master may sue for the Robbery of his Servant, and the Oath of the Servant is sufficient. 2dly, The Servant may also sue, for he had the Possession. 3dly, If the Servant be robbed in the Presence of the Master, the Master must sue, and the Oath of the Master is sufficient. Sty. 156. But if the Servant was robbed out of the Master's Presence, the Servant must swear. 4thly, As to B. who refused to swear, the Hundred is not liable; for the Statute of Eliz. was made in Favour of the Hundred to prevent Confederacy and Combination between the Thieves and the Party robbed, and 'twas the Master's Folly to employ such a Servant.

(1)
H. robbed, re-
fusing to take
the Oath,
cannot sue.
Vide post pl.
3.
7 Co. 6, 7.
Servant
robbed of his
Master's
Goods, Ma-
ster may sue.
Vide infra, &
ante 440, 441.
2 Saund. 380.

Combs versus The Hundred of Bradley. Pasch. 5 & 6 W. & M. B. R.

Vide Style's
Rep. 156, &c.
supra.

IN an Action against the Hundred, the Plaintiff declared, that he was possessed ut de bonis suis propriis, &c. The Jury found the Plaintiff was a Servant, and was robbed upon the Road

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D D 2

(2)
Servant
robbed of his
Master's Mo-
ney may have
an Action a-
gainst the
Hundred.

Billings *versus* Eads. Mich. 4 Ann. B. R.

(4)
H. may let
Coach-Horses
and Coach-
men without
a Licence.

of 1711/12
200. 148. 2
ed. 1711/12
H. may let
Coach-Horses
and Coach-
men without
a Licence.

1711/12
200. 148. 2
ed. 1711/12
H. may let
Coach-Horses
and Coach-
men without
a Licence.

TRESPASS and Special Verdict found; the Case was, A Gentleman had a Coach and Horses of his own, and gave on 1st Jan. 1701 per Annum to and him a Pair of Horses and a Coachman. And the Question was, Whether he could do this without a Licence to keep a Hackney-Coach, upon 3. & 6 W. & M. c. 22? Et per Cur. That in the Beginning of the Licensing Clause, sect. 4. and in the prohibiting Clause, sect. 5. Hackney-Coach or Coach-horses are mentioned in the Disjunctive, yet that must be understood of Coach-horses to be used with a Hackney-Coach, because all other Provisions in the Act, viz. the Number, the Fine, the Rent, and the whole Revenue retained, is confined to Hackney-Coaches; and the Party cannot forfeit, but where the Commissioners may licence; and this an Act of Restraint. Judgment for the Defendant.

Anonymus. Mich. 4 Ann. B. R.

(5)
Construction
of the Stamp-
Act.

1711/12
200. 148. 2
ed. 1711/12
H. may let
Coach-Horses
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A Warrant of Attorney for entering up a Judgment was written upon a Paper, which likewise contained a Bond, and had only one Stamp, whereas by the Act concerning Stamp-Duties it ought to have two Stamps: Judgment was entered up by Verdict of this Warrant. And now it was moved, That the Judgment and Execution might be set aside for this Cause. Sed per Cur. There may be Reason to refuse such a Warrant of Attorney in Evidence, but no Reason to make all void; for there is nothing in the Act that imports that.

Dunn *qui tam versus* Hinchdy. Pasch. 5 Ann. B. R.

(6)
Dets. fur
Stat. 10 W.
3. c. 2.
Vide 3 Lev.
290, 374.

DEBT upon the Statute 10 W. 3. c. 2. for twelve Dozen of Buttons, made de ligno tantum in Imitation of, &c. The Jury found the Buttons were all Wood but the Shanks, which were Brass, and that they were made in Imitation, &c. and that there were Buttons made de ligno tantum, &c. Weld said, That now it appeared the Statute was applicable and might have its Effect upon other Buttons, and that a Penal Law was to be construed strictly and not by Intendment. Vide 2 Inst. 199. Pl. 47. a. But the Court resolved they were prohibited by the Act; for the Shank is no Part of the Button, but added to fasten it: And if Buttons thus made in Imitation, &c. by having a brass Shank added, should be out of the Act, it would be in every Body's Power to evade it. Adjudged.

Domina

Domina Regina versus Maddox. Pasch. 5 Ann. B. R.

PER Cur. Upon Indiments on the Statute 5 Eliz. in Evidence we allow following the Trade for seven Years to be sufficient without any binding, this being a hard Law.

(7)
Exposition of
5 Eliz.
Vide ante pl.
1, 2, & 3.

Statutes of Hue and Cry.

P. C. 71, 72. 3 Inst. 68. Dalt. c. 100. Staundf. P. C. 27. 1 And. 116. 2 Sid. 44.

Stat. of Win-
ton 13 E. 1.
c. 12. and 27
El. c. 13.
Vide Hale's
1 Sid. 139.

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S. C. 1 Show.
94, 241.
3 Mod. 289.

AN Action was brought by the Master, for the Robbery of A. and B. his Servants: The Jury found the Special Matter, and that B. was a Quaker and would not take the Oath, viz. That he knew none of the Robbers. Et per Cur. 1st, The Master may sue for the Robbery of his Servant, and the Oath of the Servant is sufficient. 2dly, The Servant may also sue, for he had the Possession. 3dly, If the Servant be robbed in the Presence of the Master, the Master must sue, and the Oath of the Master is sufficient. Sry, 156. But if the Servant was robbed out of the Master's Presence, the Servant must swear. 4thly, As to B. who refused to swear, the Hundred is not liable; for the Statute of Eliz. was made in Favour of the Hundred to prevent Confederacy and Combination between the Thieves and the Party robbed, and 'twas the Master's folly to employ such a Servant.

(1)
H. robb'd, re-
fusing to take
the Oath,
cannot sue.
Vide post pl.
3.
7 Co. 6, 7.

Servant
robb'd of his
Master's
Goods, Ma-
ster may sue.
Vide infra, &
ante 440, 441.
2 Saund. 380.

Combs versus The Hundred of Bradley. Pasch. 5 & 6 W. & M. B. R.

Vide Style's
Rep. 156, &c.
supra.

IN an Action against the Hundred, the Plaintiff declared, that he was possessed ut de bonis suis propriis, &c. The Jury found the Plaintiff was a Servant, and was robbed upon the Road

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D D 2

(2)
Servant
robb'd of his
Master's Mo-
ney may have
an Action a-
gainst the
Hundred.

of 30 l. of his Master's Money, and 20 s. of his own. Et per Cur'. The Action well lies by the Servant, for the Money is his, and he is possessed ut de bonis propriis against all, and in Respect of all but him that hath the very Right: If a Servant be Robbed of his Master's Goods, he may maintain an Appeal of Robbery.

Vide i Show.
60.

Dowly versus The Hundred of Odium. Mich.
6 Will. III. B. R.

(3)
Declaration
need not set
forth the
Oath to be
taken before
a Justice of
Peace of the
Hundred.
Vi. ante pl. 1.
7 Co. 6, 7.
Noy. 155.
2 Vent. 215.

In an Action upon the Statute of Hue and Cry, a Verdict was for the Plaintiff; and Mr. Clark moved in Arrest of Judgment, That it appeared the Oath was taken before a Justice of Peace of the County, and not a Justice inhabiting within the Hundred, according to 27 Eliz. But the Court held it good notwithstanding that, for the Statute of Winton says no such Thing, and 27 Eliz. does it only by Way of Direction; and the Declaration had been good tho' it had not shewn an Oath taken before any Justice at all.

S. C. Farell.
157.

Cowper versus The Hundred of Basingstoke. Hill.
1 Ann. B. R.

(4)
Assault in the
Hundred of
A. and Goods
taken in B.
B. is charge-
able.
See 2 Cro.
675.
March. 11.
Noy. 52, 55.
1 Leon pl. 72.
1 Sid. 263,
367.

How Murder
has Relation
to the Stroke.

In Debt on the Statute of Hue and Cry, a Special Verdict was found; That the Plaintiff was travelling in the Highway in the Hundred of Michael-River, where he was set upon and carried into the Hundred of Basingstoke, and robbed in a Coppice in the Highway of this Hundred: The Question was, Which Hundred should be liable? And it was adjudged, That the Hundred of Basingstoke should, for there the Robbery was committed, and not before; and if these had been two Counties, 'tis certain the Indictment of Robbery must have been brought in the later where the Goods were taken, and not in the first where the Assault was made: Also the Hundred is not liable for not preventing the Robbery, but for not taking the Robbers; for if they are taken, the Hundred is excused. Vide Hutt. 125. Goldsb. 86. It was objected, That the Taking, &c. should relate to the Assault, and so it was a Robbery ab initio, like the Case of Murder, where 'tis certain there shall be a Relation to the Stroke, which was the Cause. In Answer to which the Court took this Diversity. As to Forfeitures there shall be a Relation to the first Cause; so if there be a Pardon of the Stroke, it shall discharge the Murder; but after the Stroke, if one knowing thereof receives him, or if a Constable arrests him and lets him go, the Receiver is not accessory to Felony, nor the Constable a Felon; for

for it is not a Felony till Death ensue. 11 H. 4. 12. b. Otherwise as to collateral Purposes; for if the Stroke and Death are laid at different Days, and the Indictment concludes, Et sic murdravit die & loco of the Stroke, it is naught; but the Day and Place of his dying is well. 4 Co. 41. Plowd. 401. But here the Assault is not a necessary efficient Cause of the Robbery, as a Stroke in Murder is; therefore there is no Relation in this Case, because no Necessity. It was objected, What if one be taken in the Hundred of A. and carried into the Hundred of B. into a House there, viz. a Mansion-House, and robbed, or taken in the Day-time in A. and carried to B. and there robbed in the Night, Shall there be no Remedy? And the Court said those Cases were not provided for by the Statute. Adjudged per Holt & totam Cur'. Also he said as to the Assault's being in the Coppice, That it was not necessary the Robbery should be in the Highway to charge the Hundred. And yet see Cro. Car. 267. where 'tis said, That the Inhabitants are not bound to keep Watch in a new High-way, or to make Amends for a Robbery therein committed.

Vide S. P.
1 Show. 60.

Who chargeable to the Hundred on a Hue and Cry, Vide 2 Saund. 423.

Subsidies, Taxes, and Customs.

Brewster *versus* Kitchel. Hill. 9 Will. III. B. R. Vide *the State and Resolution of this Case, Title Covenant*, pl. 4. pag. 198.

In the Debate of this Case it was laid down by Holt C. J. That the Word Taxes, generally spoken with Reference to a Freehold, or where the subject Matter will bear it, Shall be intended parliamentary Taxes propter excellentiam. 34 H. 8. Quinzin 9. But there be other Taxes not parliamentary, as Repair of Churches, Commission of Sewers; for any Imposition which takes away part of his Goods or Rent, is a Tax. 2 Inst. 532.

(1)
Taxes in general means parliamentary.

The ancient Way of Taxing was by Tenths and Fifteenths, then by Subsidies, after that by Royal Aids; at last by a Pound-Rate: The former were all on the Person or personal Estate, and were much the same Thing: The later was upon Rents and Lands.

Different manners of Taxing, and when introduced.

Tenths

Tenth and fifteenth were the most ancient. Vide *Spelman* ver-
bo *Quindecima*. In 8 Ed. 3. a Valuation was made on all the
Towns in England, and returned into the Exchequer, which be-
came the standing Measure for taxing. 2 Inst. 76, 77. From this
when a Tax was given, the Officers of the Exchequer would cali-
brary compute what each Town was to be charged with, and what
it came to. Vide 11 H. 4. 95. 36. Bro. *Quinz.* 9.
The first *Subsidy* was in 12 H. 8. cap. 50. which was a
Tax upon the Person for his Lands and Goods, payable by the
Party where he lived. This continued till 15 Car. 1.
The Assessment of Tax, according to a Pound Rate, came in
17 Car. 1. In these Assessments there was a Clause to empower
the Tenant to deduct: So it was in 1642, 1644, 1649. And
then, and upon this Assent it was, that in Conveyances
it came to be provided, that there should be no Deduction for
Taxes.

Trowell versus Ellford, Trin. 5 Ann. B. R.

(2)
H. may be
assessed to the
Land-Tax
either where
he dwells or
carries on his
Employment.

TRESPASS against the Collectors of the Land-Tax; the
Case was, That the Plaintiff lived in Middlesex, but ex-
ercised and followed the Business of a Factor in Smithfield; and
the Question was, Whether the Commissioners of Middlesex
where he lived, could tax him as living in Middlesex, or he should
be taxed by the Commissioners of London as following his Bu-
siness in Smithfield? And Holt C. J. held, That the Acton lay,
and that he was not taxable by the Commissioners of Middlesex;
for by the very Words of the Act, he is to be taxed in the Place
where his Office is exercised: *Ceteri Justic. contra*, for this is not
an Office which is local, but an Employment which is personal,
and the Person is taxable where he lives; and the affirmative
Words of the Act are directory: He is taxable in either Place.

Robinson versus Stephens. Mich 8 Ann. In Canc.

(3)
Where there
shall be De-
duction for
Taxes out of
Annuity, and
where not.

IF one covenants to pay an Annuity to J. S. the Covenantor
shall not deduct for Taxes; for the Charge is on the Person of
the Covenantor, and not the Land: So if H. having a Term
for Years, devises an Annuity to J. S. and his Heirs, there can
be no deduction for Taxes, for the Term for Years is no other-
wise chargeable with it, than as it is part of the personal Estate;
for it cannot be said to issue out of the Term, when in Point of
Duration it may continue much longer: So if H. grants an
Annuity to J. S. and afterwards secures it out of a real Estate,
there shall be no Deduction for Taxes; for the subsequent Secu-
rity

city cannot lessen the Effect of his former Grant, which in its Creation was Tax-free. Per Cowper Lord Chancellor, at his House.

Paul *versus* Shaw. Hill & Ann. In Cam' Scacc'.

ASSUMPSIT for 500 l. received to the Use of the Plaintiff; on Non Assumpsit a special Verdict was found, That King Charles I. gave to J. S. and his heirs, the Duty of Passage of all Wines imported, to hold discharged of all Aids and Taxes; and the Question was, Whether the Grantee should pay Tunnage for this upon 9 & 10 W. 3? Note, The Duty of Tunnage was first imposed per 12 Car. 2. c. 4. viz. 4 l. 10 s. on all French Wine; then comes 1 Jac. 2. c. 3. and imposes 8 l. per Tun on French Wine, with a Clause, that the Grantee of Passage should pay the Duty; then comes 7 R. 2 W. 3. c. 20. which imposes 25 l. per Tun; after that comes 9 Ed. 10 W. 3. c. 23. which imposes one and above, a Duty of 4 l. 10 s. to be levied according as it was by 12 Car. 2. And it was adjudged in the Exchequer, that the Grantee should not pay this Duty of Tunnage: Upon this Error was brought; and it was said for the Grantee, That this was an ancient Royal Revenue, that if the Crown now had it, Tunnage could not be had; the Queen could not pay a Duty of Tunnage out of her own Passage; that the Grantee claimed under the Crown, and ought to have the same Passage and Exemption, the rather because it was granted with this Immunity. But per Trevor C. J. and seven other Judges in the Exchequer Chamber, it was answered and resolved, That immediately on Importation, this Duty of Tunnage attached upon the Wine, and the Grantee receives whatever part he takes for Passage charged with the Duty; and this must be presumed to be the Intent of the Law; for it cannot be imagined the Law meant to raise this Duty on the People to enrich a private Man, which would be the Effect, if he may have his Passage Custom-free: And the Grantee paid the Tunnage imposed by all former Laws.

As to the Reasons on the other Side, they answered, If Passage had remained in the Crown, it could not have paid by reason of the Unity of Possession, it being absurd, that the Queen should be chargeable with a Duty to her self; but this Exemption is only personal, and the Duty revives when Passage comes to a Subject, who may pay the Duty to the Crown, as where a Person leases his Glebe. And as to the Covenants or Clause of Discharge in the Grant, that could only extend to the Tunnage then in being, which he, tho' King, had himself, and not to what he had not, but might be given to his Successors. And the Judgment was reversed.

(4)
Prisage, an ancient Duty on Goods granted away by the Crown is chargeable with other Duties charged on the same Goods while in the Grantee's Hands.

Concerning
Prisage, Vid.
Hardr. 56, 57,
218, 301, &c.
477.
Davis. 17.

T A I L.

Vide ante
570.

Symonds *versus* Cadmore. Hill. 4 & 5 W. & M. B. R.
Rot. 743. Vide *this Case*, Title Fines, pl. 3. pag. 338.

(1)
S. C. 1 Salk.
338.
1 Show. 370.
4 Mod. 1.

Machil *versus* Clark. Trin. 1 Ann. B. R. Intr. In B. R.
Pasch. 12 Will. III. Rot. 342.

S. C. Farcl.
18.

TENANT in Tail covenanted to stand seised to the Use of himself for Life, Remainder to John his eldest Son in Tail, and afterwards suffered a Common Recovery with single Toucher, wherein he was Tenant to the Præcipe: And the first Question was, What Operation the Covenant had? For if it made any Alteration in the Estate-tail, the Recovery did not bar; and if it did not, the Recovery and single Toucher did bar. The Court held the Recovery good, and affirm'd the Judgment; and Holt C. J. delivered the Opinion of the Court, and gave the Reasons for it, the Sum of which was, 1st, That if Tenant in Tail by Covenants to stand seised, or by Lease and Release, or Bargain and Sale, conveys to another and his Heirs, 'tis a base Fee, not determined nor determinable till the Entry of the Issue; for before the Statute de donis, he had a Fee-simple; and the Statute does not alter the Nature of the Estate, but restrain the Power of Alienation; and therefore as he might before the Statute, so he may since; the Statute only makes it voidable.

(2)
Covenant by
Tenant in
Tail to stand
seised to the
use of himself
for Life, Re-
mainder to A.
in Tail, is
void; because
the Remain-
der is to take
Effect after
his Death.

2^{dly}, He has the whole Estate in him, and therefore must be able to devise it, and so he said was Seymour's Case in Point, viz. Tenant in Tail bargained and sold, the Bargainee has a descendible Fee. This Case he held for Law, but denied the Case of Took and Glasgow, 1 Saund. 260. and likewise Litt. §. 612. if it be taken literally.

Bargainee of
Tenant in
Tail has a
descendible
Estate.

3^{dly}, This appears from 3 Coke 84. If Tenant in Tail grants a Rent, Advowson, &c. 'tis not void as to their Issues, but voidable; for if he brought a Formedon, the Defendant may plead a Warranty. Vide Winch. 5. Bridg. But this is still more apparent from the common Case, where Tenant in Tail makes

What Con-
veyances by
Tenant in
Tail are de-
fectible by
the Entry of
the Issue.

a Lease not warranted by the Statute, 'tis not void as to the Issue, but voidable; and Tenant in Tail may exchange with a Tenant in Fee, in which Case a Fee is given and taken without Libery; Ergo, Tenant in Tail may also by Covenant to stand seised. If Tenant in Tail by Lease and Release, by Bargain and Sale, or by Covenant to stand seised, convey to another and his Heirs, the Estate-tail is not in Abeyance, but in the Alienees, for the Law puts nothing in Abeyance, but of necessity; and 'tis not in the Tenant in Tail, for he cannot bring Waste, &c. Vide Hob. 339. Yelv. 51. 1 Leon. 110. 1 And. 191. 3 Cro. 895. But he held that the present Conveyance did produce no Alteration in the Estate-tail, because the Estate in Remainder was to commence after his Death; and took this Difference,

If Tenant in Tail make a future Lease for Years, which by Possibility may be to commence during the Life of Tenant in Tail, it is not void, but voidable as to the Issue.

But if it be a future Lease to commence after the Death of Tenant in Tail, 'tis merely void in its Creation; for 'tis not to commence till the Title of the Issue commences, and that is an elder Title concurring with it; and if the Law should make it otherwise than void, the Law would make him a Trespasser. Vide Dy. 279 Pl. 7. 2 Cro. 565.

Tenant in Tail covenants to stand seised to the Use of A. and his Heirs, or A. for Life with Remainders, it devests the Estate-tail; otherwise if the new Use be to take Effect after his Death.

So in Covenant, if one covenant to stand seised to the Use of A. and his Heirs, or to the Use of A. for Life, Remainder to B. in Fee, the Covenant is not void, but puts the Estate-tail out of the Covenantor.

But if Tenant in Tail covenant to stand seised to the Use of A. and his Heirs after his Death, 'tis void.

So it is in the Case at Bar, Tenant in Tail covenants to stand seised to the Use of himself for Life, Remainder to J. S. and his Heirs; for the Remainder is to take Effect after his Death, when by his Death the Title of the Issue commences, and the Covenant as to the Estate for Life to himself is void in this Case, because here is no Transmutation of Possession; such Covenant is in any Case only good in respect of the Remainders, and since the Remainders are void, the Covenant and the first Estate are likewise void.

Idle *versus* Coke. Pasch. 4 Ann. B. R.

(3)
Surrender to A. for Life, Remainder to A. and his Wife for their Lives, and their Heirs and Assigns; and for Default of such

H Seised in Fee of a Copyhold, surrendered the same to the Use of himself for Life, and after that to Valentine his Son and Alice his Wife, pro & durante termino vitarum suarum naturalium & hared. & assignat. prædict. Valentini & Alicia. Et pro defectu talis exitus, To the Use of himself and his Heirs. And it was held per totam Curiam, Issue to A. and his Heirs, is a Fee in A. and his Wife,

1st, That a Limitation of Uses in a Copyhold Surrender must be construed by the same Rules, and in the same Manner as if it were a Limitation in a Deed of Feoffment, or any other Conveyance at Common Law; and that the Intent of the Party is not sufficient as in a Will, for the Statute 21 H. 8. leaves the Testator at Liberty to express his Intent as he pleases; but the Common Law ties up Conveyances to set Form and set Words.

Vide ante
618.
Surrender to
be construed
as a Convey-
ance at Com-
mon Law.

2dly, In a Gift in Tail it must be limited of what Body the Issue is to come; so as it may appear by express Words, or something tantamount or equivalent; and therefore a Gift to H. and his heirs males, or a Gift to H. and his heirs females, is not an Estate-tail; because it is not said, nor does it appear of whose Body they are to issue. At Common Law this would not have been a Fee conditional; and the Statute de donis does not create Estates-Tail, but preserves them: A Fee at Common Law was either absolute or restrained; those restrained Fees were either restrained as to Duration, as a Gift to A. and his heirs, while such a House stood, &c. which was a base Fee; or restrained as to what particular heirs, or of whose Body issuing should inherit, which was a Fee conditional, and is by the Statute turned into an Estate-tail: Ergo, this is a Fee-simple at Common Law, and is so at this Day; for there are Words to create an Estate of Inheritance; but none to restrain that to Issue or heirs to the Body of the Party: But a Gift to a Man and the heirs males of his Body, is an Estate-tail; so is an Estate to Husband and Wife, & hæredibus de ipsis procreatis, for de ipsis is tantamount; so if a Gift be to H. and his heirs, if he have Issue of his Body; and if he die without heirs of his Body, the Remainder to himself and his heirs; for here is an Inheritance created, and it is manifest he meant heirs of his Body, & voluntas donatoris in Charta doni sui manifestè expressa de cætero observetur, and this is a necessary Implication. Jenk. 171. 5 H. 6. 6. So if a Gift be to A. & hæredibus suis si hæredes de carne sua habuerit, & si nullos hæredes de Carne sua habuerit, Remainder to the Donor: So if Lands be given to A. & si contingat ipsum obire sine hæredibus de corpore suo, Remainder to the Donor, is an Estate-tail, per Holt C. J. tho' not given to him and his heirs. Quære.

In a Gift in
Tail it must
appear of
what Body
the Issue are
to come.

Fee absolute;
base, restrain-
ed, condition-
al.

By what
Words Tail
may be creat-
ed.
Vide Co. Lit.
20.
10 Co. 87.
Moor Cas.
940.

3dly, They agreed Beresford's Case, viz. A Feoffment to the Use of A. for Life, Remainder to B. and the heirs males of the said B. lawfully begotten, and for want of such Issue lawfully begotten, to, &c. to be an Estate-tail; for of the said B. is de dicto B. or ex dicto B. which is sufficient to denote ex quo corpore; so if it were in Latin, remanere prædict. B. & hæredibus de dicto B. or ex dicto B. But if it were in Latin remanere dicto B. & hæredibus suis, or hæredibus ipsius & pro defectu talis exitus, Remainder over, it had been no Estate-tail.

To B. and the
Heirs males
of the said B.
lawfully be-
gotten, and
for Default,
&c. over is
Tail.

4thly, It was agreed per Holt C. J. Powys and Powell Jns. that Valentine and Alice had a Fee-simple, and not an Estate-tail, because the Words, & pro defectu talis exitus impo-
 nothing of their dying without Issue; it is not said pro defectu talis exitus de corporibus dict. Valentini & Alicie, or de prædict. Valentino & Alicia, but generally, whereas every Heir is the Issue of some Body. If there had been particular Words express'd, as if they die without Heirs of their two Bodies, there might be Reason to turn the express Estate of Fee-simple raised into Tail, which cannot be altered upon a bare Implication, the rather in this Case, because of the Words Assigns: for an Estate-tail is not an assignable Estate. 7 Co. 40. Litt. Rep. 344. 1 Cro. 363. 3 Cro. 478. Plowd. 541. 3 Leon. 3. Hob. 32. 37. Aff. 15. 1 Cro. 366. 2 Sid. 41. Gould J. contra, because the Intent of the Party was to create an Estate-tail, and the Word of in English is equal and tantamount to de & ex in Latin.

Of equal to
 de or ex in
 Latin.

Vide 5 Co.
 114, 115.
 8 Co. 147.
 Litt. Rep. 33,
 34.
 2 Inst. 107,
 1 Lev. 44.

Tender and Refusal, Amends, &c.

Giles *versus* Hart. Mich. 9 Will. III. B. R.

(1.)
 To a general
 Assumpsit,
 Tender and
 Refusal must
 be pleaded
 with a Tont
 temps prius,
 which can-
 not be after
 Imparance.
 2 Lev. 109.
 3 Lev. 24.
 103, 146, 277,
 440.
 1 Show. 129,
 130.

INDEBITATUS ASSUMPSIT and Quantum meruit, and that being requested at such a Day and Place, the Defendant refused to pay: The Defendant pleads, That at such a Day before the Request, he tendered, and the Plaintiff refused; and that afterwards he was always ready and tenders the Money into Court: Plaintiff demurs, because the Defendant had imparled, and because it is not pleadable in an Assumpsit, and because here was no Answer to the special Request. Et per Holt C. J. Where the Agreement is to pay at a certain Time, Tender at that Time, and always ready, is a good Plea; but where the Money is due and payable immediately by the Agreement, the Party must plead tont temps prius from the Time of the Promise: But this cannot be after Imparance, for by that it appears he was not always ready; otherwise if no Imparance; then he might

might have pleaded *tout temps prist* notwithstanding the Special Request told in the Declaration, because it was immaterially alleged there; so in Debt, tho' the Plaintiff say a Special Request, the Defendant may plead *semper paratus*, and pray Judgment de dampnis: And the Plaintiff may reply a Special Request to shew the Defendant was not always ready: So in the principal Case: yet there is a Difference between Debt and Assumpsit; for in Debt the Damages are but accessory; but in Assumpsit are the Principal: Therefore in Debt, the Defendant may plead in Bar of the Damages; but in Assumpsit the Defendant ought to plead always ready, with a Profer in Cur. and demand Judgment de ulterioribus dampnis.

Sweatland versus Squire. Hill. 10 Will. III. B. R.

INDEBITATUS ASSUMPSIT: The Defendant pleaded that before the Action, viz. Such a Day, he tendered the Sum of so much Money, and that he was always after ready, and now is ready, and prays Judgment de dampnis; Plaintiff demurred. Et per Cur. It is not enough that he was always ready since the Tender; the Money was due before, and the Request of Payment was a Delay, a Breach of Contract and a Cause of Action; now here is no Damages for that, but those Damages and all that part of Time remains unanswered, in respect of which the Plaintiff ought to have Judgment. Note, The Counsel for the Defendant said, that Interest was due for the Time unanswered, and Damages would be recovered in respect of that Interest. Quod fuit negatum per Powell J. Interest is recovered by Way of Damages, where Damages are recovered *ratione detentionis debiti*; but not where Damages only are recovered, for Interest is not recovered occasione dampnorum. Judgment pro quer.

(1)
Tout temps
prist.
Lutw. 226,
283, 368.

Interest not
recoverable
where Dam-
ages only are
recovered.

Lancashire versus Killingworth. Trin. 13 Will. III. B. R.

H Covenants at two Days Notice to accept 1000 l. Stock at any Time within twelve Months, and to pay 3000 l. on the Exchequer; and the Plaintiff shews, that on the second Day of November he gave the Defendant Notice he would be at the Place the fourth, and that he was there, &c. and that the Defendant was there. Per Cur. When both Parties meet at the Time and Place, he that pleads a Tender must also plead a Refusal; otherwise such a Plea is naught on Demurrer, but good after Verdict, and if the Defendant be absent, he must shew that, and also that he was at the Time and Place and tendered. Vide 1 Sid. 31. 1702 7 E. 3. 11. 2 Saund. 350. Peters & Opie.

(2)
When both
Parties meet,
Refusal must
be shewn.
1 Saund. 350.
2 Saund. 350.
Lutw. 568.

If one comes
nor, the
Pleaser must
shew when he
came, and
how long he
staid.

Must stay till
Sun-set un-
less special
Circumstances
are shewn va-
ry it is not
Vide 2 Inst.
107.
8 Co. 147.

2dy, he that pleads a Tender at the Time and Place and no one there to receive, must shew at what Time of the Day he was there, and how long he staid; for he ought to shew that he has done all that could be done on his Part to accomplish what by his Agreement he was bound to do. 6 Co. 114. Yelv. 38. 2 Co. 13.

3dy, The last Part of the Day is the Time the Law appoints for a Tender, but it must be Time enough before Sun-set for translating the Matter which is tendered: Yet in the Case at Bar wherein there could be no Transfer, but at the Hours of the Company, i. e. from ten to twelve, &c. the Plaintiff must aver the Usage of the Company, and shew that he came accordingly and stayed so long.

Ante 514.
Post. 650.
1 Lev. 176,
196.

Term-time, and Computation.

Anonymus, Mich. 10 Will. III. B. R.

PER HORN. C. J. 97. Justice Twysden used to cite the Book of E. 4. and say, they were to hear no Law the last Day of a Term.

Asmole versus Serjeant Goodwin. Trin. 11 Will. III. B. R.

(2)
Sundays and
Holidays
computed for
Acts to be
done out of
Court.
Vide Post.
Pl. 6.
6 Mod. 152.

CASE against the Custos Brevium, the Declaration was delivered on Friday Morning and Rules given to plead within four Days, whereas Saturday and Sunday were not judicial Days. Et per Cur. We reckon them non juridici as to Matters to be translated in Court, and therefore Sundays and Holidays are no Days to move in Arrest of Judgment. But as to Business done out of Court, as Rules to plead within four Days, &c. Sundays are reckoned the same with other Days.

Sir

Sir Robert Howard's Case. Trin. 11 Will. III. B. R.

At the Sittings at Guildhall.

A Policy of Assurance was made to insure the Life of Sir Robert Howard for one Year, from the Day of the Date thereof; the Policy was dated on the 30 Day of September 1697. Sir Robert died on the 30 Day of September 1698, about one a Clock in the Morning. Et per Holt C. J. in an Action hereupon it was ruled at the Sittings at Guild-hall: 1st, That from the Day of the Date excludes the Day, but from the Date includes it, so that the Day of the Date is excluded. 2dly, That the Law makes no Fraction in a Day, yet in this Case he dying after the Commencement, and before the End of the last Day, the Insurer is liable, because the Insurance is for a Year, and the Year is not compleat till the Day be over: Yet if A. be born on the third Day of September, and on the second Day of September twenty-one Years afterwards he makes his Will, this is a good Will; for the Law will make no Fraction of a Day, and by Consequence he was of Age.

(3)
Insurance of
H's Life for
a Year. H.
died on the
last Day; In-
surer liable.

Allen versus Brookbank. Trin. 11 Will. III. B. R.

UPON a Libel in the Spiritual Court for Incontinency, the Citation was served on the Sunday, and fixed on the Church-Door, and that was objected to be void, because it is a Process. Vide 22 Car. 2. Holt C. J. That Statute extends not to this Process, nor to Summons at the Church; but only to such Process which may as well be executed at any other Time.

(4)
Citation may
be serv'd by
fixing on the
Church-Door
on Sunday.

Lord Bellamont's Case. Pasch. 12 Will. III. B. R.

THE Attorney-General moved for a Trial at Bar last Pa-per-Day in the Term, in an Action against the Governour of New-York, for Matter done by him as Governour; and granted, because the King defended it.

(5)
Trial at Bar
last Paper-
Day.
Post. 651.

Sir Christopher Hales versus Owen. Trin. 2 Ann. B. R.

SUNDAY is not included in the four Days to move in Arrest of Judgment, but the Defendant must have four juridical Days. Vide Post. 627. 6 Mod. 252. ante pl. 2.

(6)
Sunday not
included in
the four Days
to move in
Arrest of
Judgment.

Parker

Parker *versus* Sir William Moor. Hill. 2 Ann. B. R.

(7)
H. may be
taken on an
Escape-War-
rant on Sat-
day.

ONE was taken on a Sunday by Vertue of an Escape-Warrant, and it was held good; for one may take another on a Sunday upon fresh Pursuit, and this is in the Nature of it, tho' it be by a new Method, for this is no original Process, but the Party is in still upon the old Commitment continued down.

S. C. 6 Mod.
143, 159, 196.

Harvy *versus* Broad. Pasch. 3 Ann. B. R.

(8)
Tres Trin.
on Sunday,
Writ of En-
quiry then
returnable,
executed
Monday;
Error.
1 Jon. 301.
Court takes
judicial No-
tice of Com-
putation of
Time.
Vid. 6 Mod.
41, 81, 143,
160, 252, &c.
1 Leon. 242,
& infra.

A Writ of Enquiry was returnable tres Trin. which was Sunday, and the Writ was executed on the 14th, and that was Monday, which was kept as the Court-Day, but was a Day after tres Trin. A Writ of Error was brought. Et per Cur.

1st, A Writ may be executed the Day it is returnable but not after. 2dly, The Court may take Notice of this judicially, and there needs no Writ of Error, and no Assignment of this for Error on the Record. So 5 Co. 45. the Court took Notice that the Teste of the Writ of Covenant was after the Return. Vide Co. Ent. 250. Mo. 571. and Plowden, Fish and Brocker's Case, the Court took Notice the Proclamation of a Fine was on a Sunday. 3dly, There was no Difference between moveable and immoveable Feasts; for the moveable Calculation for Easter was made by the Council of Nice, but received in England and made part of the Calendar, which is established by the Law of England: Therefore, whether the Feast be moveable or immoveable, or whether the Computation is by the Day of the Month or the Day of the Week, viz. Die Lunæ prox. post tres, &c. as 'tis in judicial Proceedings, we have the same Law and the same Rule, and the Court cannot but see and take Notice of what appears to them. Vide 1 Cro. 53. 1 Lev. 196. 1 Sid. 301. Plowd. 265, 266. b. Ro. 524. Dy. 181. Pl. 52. 21 H. 6. 13. Pl. 4. 3 Cro. 227. Lat. 118. 2 Cro. 506. 548. 1 Jon. 301. Stat. de Anno Bisextili. Harvy *versus* Broad. The Judgment was reversed.

S. C. 6 Mod.
250, &c.

Davies *versus* Salter. Mich. 3 Ann. B. R.

(9)
Same Point
1 Mod. 402.

A Writ of Enquiry was returnable tres septiman. Trin. which was Sunday the 13th of June, and the Writ appeared to be executed the 14th Day of June. Judgment pro quer. and Error brought; and Eyre urged, That the Court could not take Notice of the Days of the Month. 1 Cro. 275. Yelv. 140. 1 Ro.

1 Ro. Abr. 595. Sed non allocatur; thus he urged, That Sunday ought not to be reckoned, but Monday in Lieu of it. Vide Br. c. 3. 2 Cro. 16. 1 Cro. 11. Et per Holt C. J. If Sunday happen to be the 4th die post, the Holding of the Term must of Necessity go over till Monday. So if Sunday happens to be the Echin. Day: And as to the Relation of Judgment, where the Echin. Day is a Sunday, the Judgment can only relate to the first judicial Day. All Quinden. Octab. &c. are inclusive: Here we enter die Lunæ, &c. and that is inclusive: In C. B. they enter a die Lunæ, &c. and yet that is inclusive too: But in the principal Case there is no Necessity, the Writ might have been executed sooner, or returned at another Day.

1 Jon. 300.
1 Danv. 683.
2 Danv. 254.
6 Mod. 41,
81, 160, 196.

And 413,
625.

Vide Lutw.
107, 108,
1359.
2 Cro. 221.
1 Saund. 32.
Raym. 4067.

TRAVERSE.

Young *versus* Ruddle Mich. 7 Will. III. B. R.

ASSUMPSIT and Quantum meruit: The Defendant pleaded he gave the Plaintiff a Beaver-hat in Satisfaction of the Promises, and the Plaintiff accepted it in Satisfaction: The Plaintiff, Protestando That he did not give it in Satisfaction, traverses, That he accepted it in Satisfaction; to which it was demurred. 1st, It was urged, That this could not be pleaded in Satisfaction of the Promises, but should have been of the Damages, like Neal's Case, Yel. 192. In Debt upon an Obligation, the Defendant pleaded a Load of Lime given in Satisfaction of the Obligation, and it was held no Plea; for it ought to be pleaded in Bar of the Money due by the Condition. Sed per Cur. A Release of the Condition would have been no Bar to Debt on the Obligation; but a Release of the Promise in the Case at Bar had been a good Plea. 2dly, It was urged, That this Traverse was naught; for if the Gift in Satisfaction be admitted, his Acceptance will not be material. Et per Holt C. J. The Acceptance is material as well as the Gift; to plead a Gift without shewing the other received it, would be naught, either is traversable. Vide Hob. 178. Et per Vol. II.

(1)
Assumpsit,
Satisfaction
pleaded; Issue
taken upon
the Accep-
tance, good.

Roke-

Rokeby J. The Gift is neither admitted nor confessed in this Case by the Plaintiff, because there is a Protestando to the Gift; so that it doth not appear here was any Receipt at all.

Pullen *versus* Benson. Mich. 10 Will. III. B. R.

(2)
Non antea
held no Tra-
verse where
further Mat-
ter must be
disclosed be-
fore he can
conclude to
the Country.
Cro. El. 439,
443.
1 Leon. 95.
Cot. 123.

IN Debt on a Bond, the Plaintiff declared, quod Def. 20 die Novembr. concessit se teneri, &c. & profert in Cur. scriptum prædict. geren. dat. eisdem die & anno. Defendant pleads, That it was first delibered 30 die Novembr. & non antea, and shews the Writ, on which he was in Custody, was returnable quinden, Martini, so that the Bond was taken after the Return of the Writ; and then relies on the Statute of H. 6. The Plaintiff demurred and had Judgment; and the Court agreed, That mere Matter of Supposal is not traversable. no more is Matter alledged out of due Time, no more is Matter immaterially alledged: But they held the 20th Day of November an express Allegation; and that the Defendant's Plea had made it material; for the Validity of the Bond turned wholly upon the Day of the Delivery; upon which Reason the Defendant should have traversed its Delivery on the 20th. And the Court held the non antea was no Traverse, because 'tis that which cannot be rested upon; but the Party must disclose farther Matter before he comes to conclude. Cited Yelv. 128. 2 Cro. 263. 5 H. 7. 26. 2 Keb. 108. 1 Sid. 300. Yelv. 31. But Holt C. J. said, That that Case of H. 7. came not up to this Case.

(3)
De injuria
sua propria is
a good Re-
plication to a
Justification
by the Com-
mon Law or
general Sta-
ture.
Vide 1 Lev.
307, 308.
2 Lev. 11, 12.
3 Lev. 41.

Chance *versus* Weedon. Mich. 13 Will. III. B. R.

TRESPASS for 200 Bushels of Salt: The Defendant sets forth the Act for laying a Duty on Salt 10 W. 3. that it was put on Board to be exported, not being weighed, &c. that he was an Officer, &c. and seized it; the Plaintiff replied De injuria sua propria absq; tali causa; the Defendant demurred. Et per Holt C. J. Where the Defendant justifies by Virtue of an Authority by the Common Law, as a Constable by Arrest for Breaking of the Peace, under Process of the Admiralty, &c. de injuria sua propria is a good Replication; so it is, and by the same Reason, when one justifies by an Authority of an Act of Parliament; for being a general Law, the Statute can be no Part of the Issue. Vide 16 H. 7. 2. 5 H. 7. 6. Co. Ent. 643. A Justification upon the Statute de malefactoribus in parais, and a like Replication: As for the Case in Croger's Case of Waste, and enter per View, Holt C. J. said it stood on a particular Reason: Also the Court held the Plea ill, because it was not shewed what

Sort of Salt this was, Bay-salt, Pit-salt, White-salt, &c. for the Statute does not extend to all, Judgment pro quer.

Haywood *versus* Davies, & al. Mich. 1 Ann. B. R. (4)
Vide this Case, Title Abatement, Pl. 10. pag. 4

WHERE a Traverse ought to conclude to the Country, and where with an Averment.

White *versus* Bodinam. Pasch. 3 Ann. B. R.

LESSEE for Years brings Covenant against the Lessor, declaring upon a Demise and Covenant for quiet Enjoyment and assigns for Breach, that the Lessor did enter upon him and oust him of the Premises: The Defendant pleads, That he entered to distrain for Rent-arrear, absque hoc that he ousted him de premissis. To which the Plaintiff demurred, thinking the Traverse ill; because if he had ousted him of any Part of the Premises, he had a good Cause of Action, therefore he should have traversed absq; hoc that he ousted him of the Premises, or of any Part thereof. But per Cur. The Plea is well enough in this Case, for if the Plaintiff will join Issue upon the Matter of the Traverse, and prove the Ouster of any Part, the Issue will be for him: And the Court took a Diversity between pleading the general Issue, as in Debt, you must plead Non debet nec aliquam inde parcellam, and a special Issue, as this is. 3 Cro. 83, 84, Dyer 115. Judgment for the Defendant.

(3)
Absque hoc that he ousted him de premissis goes to every Part. Vide 2 Mod. 68.
3 Lev. 113, 227.

Gilbert *versus* Parker. Pasch. 3 Ann. B. R.

Lutw. 1624, 1625.
Quar. 6 Co. 24.

IN Replevin for taking Cattle, the Defendant made Conusance, that A. his Master was seised of the locus in quo, and per ejus precept. he took them Damage-lesant: Plaintiff replied, That he was seised of one third Part and put in his Cattle, absq; hoc that the said A. was sole seised: To this the Defendant demurred, and Judgment was given against him; for the Defendant makes Conusance under his Master as sole seised, when he was only Tenant in Common; in which Case he should have pleaded according to the Truth, that he was only Tenant in Common, &c. When the Defendant pleads his Master was seised in Fee of the Place where, &c. that must necessarily be understood that he is sole seised; and whatever is necessarily understood, intended and implied, is traversable as much as if it were expressed; and therefore, tho' a Seisin in Fee is only alledged generally, yet that

(6)
Upon pleading a Seisin generally, Traverse may be taken that he is sole seised. Vid. ante 563. 5 Mod. 150. Cro. El. 372.

being intended a sole Seisin, the Plaintiff may traverse, absque hoc that he is sole seised; since the Plaintiff makes himself Tenant in Common with the Defendant, it had not been enough to say, That he is Tenant in Common, without traversing the sole Seisin.

2dly, The Court held he might either traverse, absq; hoc that he was sole seised, or that he was seised modo & forma. Hob. 119. 3 Cro. 795. Winch. 7. 2 Mod. 5. Dyer 280. of which the Court doubted, but said there might be Difference between Parceners and Tenants in Common who are seised per my & per tout. Vide 1 E. 4. 9. 2 Vent. 228. Hurt. 120. Hob. 72. Mo. 863. 37 H. 6. 31. Kel. 27. 1 Léon. 78. 32 H. 6. 2. 6. 21 E. 4. 65.

See 1 Hawk.
P. C. cap. 17.
Hale's P. C.
10, 11, &c.
Kely. Rep. 2,
3, 4, &c.

TREASON.

Rex & Regina *versus* Geary. Mich. 1 W. & M. B. R.

(1)
Attainder of
Treason re-
versed for
want of an
Allocutus be-
fore Judg-
ment.
Vid. ante 76.

GEARY was attainted of High Treason on an Indictment, to which he pleaded Guilty. Upon a Writ of Error brought to reverse this Attainder, the Exception taken was, That it did not appear he was asked what he had to say, why Judgment should not be given against him; and all the precedents are with an allocutus quid, or si quid pro se dicere habeat, &c. Vide Plowd. 387. Co. Ent. 532. Rast. 455. And the Court held the Exception good, for he might have Matter to move in Arrest of Judgment, or a Pardon; and the Attainder was reversed.

S. C. Parli-
ament Cas. 186.
& vid. ib.
127. & post
632.

Tucker's Case. Pasch. 5 & 6 W. & M. B. R.

(2)
Judgment in
Treason re-
versed for
Want of the
Words contra
ligeantiz sue

REGINALD TUCKER brought a Writ of Error to reverse an Attainder of High Treason, upon an Indictment against him for the Rebellion in Monmouth's Time: The Indictment was, That the Defendant and another, Ligeantiz sue debi-
tum

debitum in the Indictment.

tum minime ponderan', did traitterously wage War against the King verum & naturalem Dominum suum contra pacem, &c.

It was held, 1st, That the Want of the Words, contra Liganciam suam debitum, supposing them to be necessary, were not supplied by the first Words, Liganciam suam debitum minime ponderan', &c. for a Man may not consider his Duty, and yet may not act so as to offend against it: And contra Liganciam suam debitum, are not now necessary, nor were they anciently used. These do not positively express, but imply only, That the Defendant acted against his Allegiance; and Indictments shall not be made good by Intendments.

2dly, Without the Duty of Allegiance there can be no Treason, therefore an alien Enemy cannot commit Treason; an alien Army being here any: That for Want therefore of these Words, the Crime wants a due Description.

'Tis true, some Precedents of Indictments want the Words Contra Liganciam suam debitum. But to these the Chief Justice said, They were Cases of Treason made by particular Acts of Parliament, and not where the fact was Treason in its Nature; and that in such Case 'twas sufficient if the Indictment pursued the Words of the Statute, and concluded contra formam Statuti, without concluding contra liganciam suam debitum. The Attainder was reversed.

Charnock's Case. 7 Will. III. *At the Old-Baily.*

THE Question was at the Trial, Whether Words could be an Overt-Act of Treason in compassing the Death of the King? For Hale, Placit. Coron. 13. says, Words are not an Overt-Act of Treason, unless set down in Writing. Et per Holt C. J. Loose Words spoken without Relation to any Act or Project, are not Treason: But Words of Persuasion to kill the King are Overt-Acts of High Treason; so is a Consulting how to kill the King; so if two Men agree together to kill the King; so the bare Imagination and Compassing makes the Treason, and any external Act that is a sufficient Manifestation of that Compassing and Imagining, is an Overt-Act: It was never yet doubted, but to meet and consult how to kill the King, was an Overt-Act of High Treason. Vide Cro. Car. 117.

Post. 833.
3 Inst. 11.
Hob. 271.
Co. Lit. 129.
Calvin's Case.
6, 7.

Indictments
not to be sup-
plied by In-
tendment.
See 2 Hawk.
P. C. 224, to
256, what
Certainty ne-
cessary in In-
dictments.

Vid. 2 Hawk.
P. C. 252.

Vid. 1 Hawk.
P. C. cap. 17.
Sec. 32, 33, 34.

(3)
Words of
Persuasion or
Consultation,
an Overt-Act
of Treason in
Compassing
the King's
Death.
Vid. Cro. Car.
125, & 331,
333.

Dominus

S. C. Parl. *Dominus Rex versus Walcot.* Trin. 7 Will. III. B. R.
 Cal. 127, &c.

(4)
 Judgment in
 Treason re-
 versed for
 want of the
 Words ipso
 vivente, or in
 conspectu e-
 jus, as to
 burning the
 Bowels.
 Vide Parl.
 Cal. 127, &c.
 & 186, &c.
 Ante 630.
 3 Lev. 396.
 4 Mod. 162.

Record of
 Judgment in
 Treason re-
 fused to be
 amended by
 the Minutes
 of the Court
 of Old-Bailly.
 Vid. 2 Hawk.
 P. C. 247.

WRIT of Error to reverse a Judgment against the Defen-
 dant in an Indictment of High Treason: The Judg-
 ment was, Quod interiora extra ventrem trahentur; but these
 Words, in conspectu ejus & ipso vivente comburentur, were
 omitted: It was agreed, That if this be a necessary Part of
 the Judgment and omitted, the Judgment is erroneous; for the
 Judgment, in capital Cases especially, is stated, and not arbitra-
 ry; and 'twas held that this was a necessary Part; for tho'
 Death is the Ultimum supplicium, yet Death inflicted one Way
 is more severe than another, and more formidable; and if this
 Judgment be right, all other Judgments are wrong; for all others
 have these Words, viz. In conspectu, &c. Vide 1 H. 7. 24. Br.
 Coron. 121. Stow's Annals 513. Plowd. 387. Rast. 545. Staundf.
 128. Co. Ent. 422, 423. Harrison, one of the Regicides, rose
 up and struck his Executioner after his Bowels were cut out,
 which shews the Thing is not impossible, tho' that be not very
 material: At another Day 'twas insisted, That the Record below
 was right on an Affidavit, that swore, That the Words ipso vi-
 vente were in the Record below, and therefore it was prayed,
 That the Clerk of the Peace might attend by Rule, which was
 granted; and upon his Attendance it appeared upon Examina-
 tion, That the Minutes of the Judgment taken and entered upon
 the Record of the Indictment had these Words in; but Mr. Tur-
 ner, Clerk of the Peace, said, That Sir Robert Sawyer, then
 Attorney-General, after the Trial, said, That Use was to be
 made of the Record in Ireland, and therefore examined it before
 it was transcribed, and then this Record which is now certified,
 was entered at large; so that the Question was, Which was the
 Record? Et per Cur'. That which was entered at large is the
 Record: Then the Counsel moved it might be amended by the
 Minutes: And Holt C. J. said, That if it were amendable, they
 could not amend it here; for if a Record in C. B. be erroneous,
 we cannot amend it here; but upon Diminution alledged here,
 we grant a Certiorari; but there can be no Diminution alledged
 at the Old-Bailly.

2dly, He questioned much if it were at all amendable, and cited
 Sampson's Case, Jones 421. where the Court were divided, and
 'tis there said by Kelynge, That there were no Precedents of any
 such Amendments: And after the Case had been argued several
 Times at the Bar, upon the Matter in Law, the Court, Trin.
 8 W. 3. unanimously, upon solemn Arguments, reversed the At-
 tainder, for want of the Words, ipso vivente, or in conspectu
 ejus.

Cranburn's Case. Pasch. 8 Will. III. B. R.

CRANBURN, a natural-born Subject of England, was indicted of High Treason contra Ligeantia suæ debitum. It was objected, That it ought to be naturalis Ligeantia suæ debitum, or contra supremum naturalem Dominum suum, to distinguish it from that which is local Allegiance; for there are two Sorts of Allegiance; a natural Allegiance, as that of Subjects; and a local Allegiance, as that of Strangers residing here; and this is the Allegiance in the Indictment mentioned. Sed per Cur. If an Alien be indicted for Treason contra naturalem Dominum suum, or naturalis Ligeantia suæ debitum, the Defendant may give in Evidence that he is an Alien; for the Indictment is restrained to that Species of Allegiance which is not due; but a Subject may be indicted so, or contra Ligeantia suæ debitum; for Allegiance is the Genus, which being set forth, all Species are comprised under it.

The Indictment was, That at such a Time and Place proditorie tractaverunt proposuerunt & consultaverunt de viis & modis quomodo Dominum Regem interficerent & consenserunt & agreaverunt quod quadragint. homines equestres should be provided, &c. for that End.

It was objected, That here are two distinct Acts of High Treason, and the later is not laid to be done proditorie. Sed non allocatur; for by H. Cowper, the Et makes the Whole but as one Sentence; at least it conveys the Force of the Words in the former Sentence to this, and makes it partake of them. Et per Holt C. J. Here is but one Treason alledged, viz. Compassing the Death of the King, and that is laid to be proditorie; therefore it need not be repeated again in setting forth the Overt-Act, for the Overt-Act is not the Treason, but Evidence of the Treason. The Treason it self lies in Compassing, which is an Act of the Mind. Accordingly in the Case of the Regicides it was agreed, That the Indictment should not be for killing the King, but for Compassing and Imagining his Death, and that the Killing should be alledged as the Overt-Act; for by the Statute the Treason consists in the Intention. But if a distinct Treason, as that of levying War, had been alledged, where the Treason consists in the Act and not in the Intention, the Act must have been laid to be done proditorie; for the Act of levying is a Treason, and not an Overt-Act of Treason or bare Matter of Evidence.

(3)
Subject indicted for Treason contra Ligeantia suæ debitum, well; otherwise if naturalis'd, &c. in the Case of an Alien. Ante 631. 3 Inst. 5. 11. Hob 271. Co. Lit. 119.

In Indictments for Compassing the King's Death, the Treason being first laid, the Overt-Act need not be laid proditorie. See 1 Hawk. P. C. 38, 39, &c.

Otherwise where the Treason consists in the Act.

Cook's

Cook's Case. 8 Will. III. *At the Old-Baily.*

(6)
Copy of In-
dictment not
granted after
pleading.

In the Indictment against Cook, after the Court was late and the Jury called, but not sworn, Sir Bartholomew Shower of Counsel for the Prisoner made Objections to the Indictment, but it was held right enough; upon that he urged, That then he had not had a Copy, and the Prisoner could not be tried. Et per Cur. By the Statutes of the Act he is to demand it, and he has it to enable him to plead, and till then is not to plead. In this Case he has pleaded; therefore this Benefit is waived, and the Prisoner has admitted he has a Copy, or did not think it for his Service to require it, but was able to plead without the help of it.

Vaughan's Case.

(7)
Indictment
for Treason
in levying
War, or ad-
hering to the
King's En-
emies gene-
rally, with-
out shewing
particular In-
stances, not
good.
Vid. 1 Hawk.
P. C. 37, 38.

THE Defendant was indicted for Treason, in adhering to the King's Enemies, cum pluribus subditis Gallicis inimicis Domini Regis, and that they did navigate a certain Vessel, called Clancarty. with a Design to destroy the King's Ships. And it was held by Holt C. J. and the other Justices at the Trial, That an Indictment for leaping War, or adhering to the King's Enemies generally, without shewing particular Acts or Instances, is not good; for the Words of the Statute are, And thereof be provably attainted by some Overt-Deed, which comes after the Particulars of Compelling the King's Death, leaping War, and adhering to the King's Enemies; and it would be Violence to restrain them to the first Article only without Regard to the last, to which they are equally connected; if they are to be restrained to a single Article, it ought rather to be referred to the Article of adhering only.

And if it be not a good Indictment without special Ads, &c. the Question is, Whether those that are alleged ought not to be proved, and no others? Et per Holt C. J. A distinct Overt-Act cannot be given in Evidence, unless it relate to that which is alleged, or conduces to the Proof of it. But if it conduce to prove an Overt-Act alleged, 'tis good Evidence; as if Consulting to kill the King be alleged, any Affairs or Doings in Pursuance of that Consultation may be proved; for it proves their Agreement and Consent, and is a farther Manifestation of the Act alleged in the Indictment.

It was also objected, That in Evidence the Sea-men must appear to be French-men boꝝn; foꝛ if they were Dutch, they are not subditi Gallici.

2dly, That tho' he was said to adhere to the King's Enemies, yet it was not said to be against the King.

3dly, That this was not a sufficient Act of adhering, without fighting, or some Act of Hostility. Et per Cur'.

1st, If the States be in Alliance, and the French at War with us, and certain Dutch-men turn Rebels to the States, and fight under Command of the French King, they are Inimici to us, and Gallici Subditi: For the French Subjection makes them French Subjects in Respect of all other Nations but their own; and if such cruise at Sea, and an English-man assist them, he is a Traitor but not a Pirate; for none are Pirates that act under the Command of a Sovereign Prince.

Joining with Rebel Subjects of the King's Ally, fighting under the Command of an Enemy Prince, is Treason in adhering, &c.

2dly, Adhering to the King's Enemies must of Necessity be against the King; and therefore if an English-man assist the French, being at War with us, and fight against the King of Spain, who is an Ally of the King of England, this is Treason, as adhering to the King's Enemies against the King; for the King's Enemies are hereby strengthened and encouraged, and so is within the express Words of 25 E. 4. of adhering to the King's Enemies; and it is sufficient to alledge the Treason in the Words of the Statute.

Tho' the fighting be directly against an Ally. Vide Hawk. P.C. 37, 38.

3dly, Cruising is a sufficient Overt-Act of Adhering, Comforting and Aiding; as if English-men would lift themselves and march, this is sufficient without coming to Battle, and there may be levying War without actual fighting. Vide Vaughan's Trial.

Cruising is a sufficient Overt-Act.

See Raym. 367. That an Indictment for High Treason may be tried by Nisi Prius.

TRESPASS.

Inclendon versus Burgefs. Mich. 1 W. & M. B. R. Intr.
Mich. 4 Jac. 2. Rot. 282.

(1)
Contra pacem is Substance.
Vid. post 641.
Cro. Jac. 527.
1 Hawk. 244.
2 Hawk. 243.

TRESPASS for Breaking, Entering, and Depossuring 36 Car. 2. continuing the Depossuring till 4 Jac. 2. contra Pacem Domini Regis nunc, which was R. James the Second. This was held naught, for then there is no contra Pacem to the Trespass tempore Caroli secundi, but it is omitted, and contra Pacem is Substance. Vide Cro. Car. 325. Cro. Jac. 426, 443, 537.

Hore versus Chapman. . . . 1 W. & M. B. R.

(2)
Declaration in Trespass, Quare vi & armis, &c. ill. See 2 Lev. 206.
2 Jon. 197.

In Trespass the Plaintiff declared, Quare vi & armis clausum fregit, and after Verdict for the Plaintiff, Judgment was arrested, for quare is not positive but interrogatory, and much worse than quod cum. Vide 1 Cro. 420. 2 Cro. 47. 2 Bull. 214. Godb. 251. 2 Keb. 400. 1 Sid. 326. 3 Cro. 57. 1 Keb. 377.
2 Show. Cal. 17, 18, 194. Con. 413.

Wildgoose versus Kellaway. Trin. 3 W. & M. B. R.
Rot. 268.

(3)
Declaration in Trespass without vi & armis, ill on a general Demurrer.
Vid. 1 Hawk. 145, 149, 150.
2 Hawk. 241, 242.

TRESPASS for breaking his house and taking away his Dishes; the Defendant justified under a By-Law, but that being ill, the Plaintiff demurred; but the Defendant took Exception to the Declaration, because it wanted the Words Vi & Armis; and the Court held it naught on a general Demurrer, being an Omission of the Substance; for it alters the Judgment from a Capiatur to a Misericordia. Item, It belongs to the Jurisdiction of the County-Court, if it be a Trespass without Vi & Armis.

S. C. + Mod.
355.

(4)
Trespass lies
for Fishing
in libera Pif-
caria, and re-
taining his Fish.

H. who hath
free Warren,
may bring
Trespas a-
gainst any,
but the Owner
of the Soil
for hunting
there.

H. having li-
bera Piscaria
hath Property
in the Fish,
and Co. Lit.
122, denied.
Vide ante
556.
11 Co. 17, &c.
Cro. Car. 553,
554.

In *Trinoids and Shutt, &c.* The Defendant pleaded that he was riding a horse in the King's highway, and that his horse being frightened ran away with him, and that the Plaintiff

(4)
Justification
must confess
the **Trespass.**

and others were called to, to go out of the Way, and did not; and the horse ran upon the Plaintiff against his Will, &c. The Plaintiff demurred and had Judgment; not but if the Defendant had pleaded Not guilty, this Matter might have acquitted him upon Evidence; but the Reason of their Judgment was, because the Defendant justified a Trespass, and admitted confessions; for if A beats my horse, by which he runs on another, A is the Trespasser, and the Rider is not. And as to Mob. 134. Mo. 854. Blacke is against Brownl. Precedents 188. they differ, for in them a Battery is confessed.

Ashmead versus Ranger. Will. III. B. R.

TRESPASS was brought by Lease of a Coppholder for Life, for breaking his Close and cutting down his Trees; the Defendant justified as Servant to the Earl of Kent, Lord of the Manors. The Plaintiff replied, That the Coppholder was Tenant for Life, his House in Decay, and that the Trees growing on the Land were not sufficient to repair, &c. Upon Demurrer Holt C. J. held, That a Gro. is not a Law, and that the Coppholder was Tenant of the Trees as much as of the Land; that the Stalk and the Acorns belonged to the Tenant; and he held, That if H. has all the Thorns in such a Place for Chabers, he may maintain Trespass against any one that cuts them, even his Grantor, and in such Case need not aver that he burnt them. But where H. hath only Thorns to be taken in such a Wood or Place, and the Grantor cuts the Thorns, the Grantor may maintain Case against the Grantor, but not Trespass Vi & Armis; and the whole Court held the Action was well maintained by the possessor Right which the Plaintiff had. The Judgment was affirmed in Com. Scacc. but reversed in the House of Lords; for the Tenant could not cut the Trees, and if the Lord could not, they must rot on the Land; for then no Body could.

S. C. 6 Mod. 38.

Monkton versus Pashley. Hill. I. Ann. B. R.

TRESPASS for entering his Close and hunting such a Day, continuando transgr. przd. quoad the hunting, diversis diebus & vicibus, from the Day of the Trespass alleged till such a Day. Salkeld urged that this appeared not to be continued; that some Acts were permanent without Intermision or Repetition, which properly lie in Continuance, others not.

(7) Trespass for entering his Close and Hunting, laid with a Continuando, and held well. Vide post pl.

adly, That some Acts terminate in themselves and cannot be repeated, as killing a Dog, when once done it cannot be done again; therefore this cannot be laid with a Continuando. Vide 1 Lev. 210. 2 Ro. Abr. 349. And as to repeatable Acts, where-ever the first Trespass is without an Ouster, there every several Entry is a distinct Trespass and a new Trespass, and not a Continuance of the first; for a Release of the first would not discharge the Second. Vide Cro. Jac. 107. Yelv. 126. [which Holt C. J. denied; for the Continuance must be answered as well as the first Act.] But where the first Entry is with an Ouster, there every other Act of Entry during the Ouster is but a Continuance of the first Trespass, and a Release of the first discharges all. Vide 1 Brownl. 222. Cro. El. 210. 1 Lev. 210. compared with 1 Sid. 319. and so is F. N. Br. 91. b. to be intended. So is 20 H. 7. 3. 2 Ri. 3. 15. 21 H. 9. 43. Holt C. J. held, That of Acts that terminate in themselves, and once done, cannot be done again, there can be no Continuando, as hunting and killing a Hare or five Hares, but that ought to be alleged, That diversis diebus & vicibus inter such a Day and such a Day, he killed five Hares, or cut and carried twenty Trees; And where a Trespass is laid in Continuance, that cannot be continued, Exception ought to be taken at the Trial, for he ought to recover but for one Trespass: The Court held, That hunting might be continued as well as spoiling and consuming his Grass, or cutting his Grass; and as to the Case of an Entry and Ouster the Court held, That the Plaintiff being ousted and having made a Re-entry, might bring Trespass, and declare that he entered such a Day, continuando, &c. or that he entered such a Day & diversis diebus & vicibus between such a Day and such a Day. And the Plaintiff had Judgment.

Brook *versus* Bishopp. Hill. 1 Ann. B. R.

TRESPASS Quare Vi & Armis the Defendant on the 2d of April, broke and entered his Close, and trod down his Grass, nec non arbores suas, viz. 10 Populos & subboscum suum viz. 10 carectatas subbosci succidit cepit & asportavit transgressionem præd. usq; 27 Aprilis diversis diebus & vicibus continuando; and after Verdict and entire Damages, it was resolved, 1st, That the Continuance, as to the Poplars and Underwoods, was impossible, and could not be.

adly, That no Part of the Damages shall be intended to be given for that, but shall be applied to such Trespases as may be continued according to 1 Vent. 363. Continuando transgr. præd. generally, shall only refer to so much as lies in Continuance; but if it be continuando such and such Particulars, and they lie not in Continuance, it is naught after Verdict.

Joce

6 Mod. 19.
1 Lev. 210.

(S)
Trespass in cutting down such a Number of Trees cannot be continued; but a general Continuando shall be applied to what may be continued after Verdict. Vide ante Pl. 7.

Acts that being once done cannot be repeated, cannot be laid with a Continuando. 1 Lev. 210. 2 Ro. Abr. 349. 20 H. 7. 3. 2 Ri. 3. 15. 21 H. 9. 43. Holt C. J. held, That of Acts that terminate in themselves, and once done, cannot be done again, there can be no Continuando, as hunting and killing a Hare or five Hares, but that ought to be alleged, That diversis diebus & vicibus inter such a Day and such a Day, he killed five Hares, or cut and carried twenty Trees; And where a Trespass is laid in Continuance, that cannot be continued, Exception ought to be taken at the Trial, for he ought to recover but for one Trespass: The Court held, That hunting might be continued as well as spoiling and consuming his Grass, or cutting his Grass; and as to the Case of an Entry and Ouster the Court held, That the Plaintiff being ousted and having made a Re-entry, might bring Trespass, and declare that he entered such a Day, continuando, &c. or that he entered such a Day & diversis diebus & vicibus between such a Day and such a Day. And the Plaintiff had Judgment.

(S)
Trespass in cutting down such a Number of Trees cannot be continued; but a general Continuando shall be applied to what may be continued after Verdict. Vide ante Pl. 7.

S.C. Mod. 14

Joce versus Mills. Trin. 2 Ann. B. R.

(9.)
Trespas
quare duos
Equos apud
D. in clauso
pred. invent.
existen. & tri-
ticum de bo-
nis propriis
ipsius A. &c.
cepit, does
not shew the
Property of
the Horses.

TRESPASS quare clausum suum apud D. fregit & duos equos apud D. pred. in clauso pred. invent. existen. & Centum congios tritici de bonis propriis ipsius adtrunc & ibidem similiter invent. & existen. cepit & asportavit, &c. The Defendant pleaded Not guilty to all but the two Horses, and as to them a Distress for Rent; upon which it was demurred, the Issue being found for the Plaintiff and contingent Damages intirely given on the Demurrer: And now the Plea being held an ill Plea, Mr. Branchwayte moved in Arrest of Judgment, That the Horses were not said to be the Goods of the Plaintiff; for that it did not follow that they were the Plaintiff's Horses, because found on the Plaintiff's Close. Vide 2 Cro. 46. Yelv. 36. Equum cepit a Persona sua. 3 Lev. 156. 3 Bull. 303. Quod fuit conce. Per Cur.

Plea of tak-
ing by Di-
stresses for
Rent, does
not confess
Property.

1^{stly}, It was urged and admitted, That the Plea did not confess a Property; for the Defendant might distrain the Goods of a Stranger for the Rent.

2^{dly}, It was held, That the Copulative Et did not let it into the subsequent Part of the other Sentence, so as to make the Horses come under the de bonis propriis, like the Case in Raymond 395. Trespas for taking a Horse, ipsius quer. nec non bona & catalla sequent. nisi 2 Saund. 379. which Cases were allowed; and the Reason is, because they are different Sentences, and the first is closed up by the Place being added: Yet Could I. agreed the Case in 2 Ro. 250. Placio 7. For there by Virtue of the Copulative, the ipsius Querentis goes to all.

4^{thly}, It was held the Plaintiff could have no Judgment, be-
cause the conditional Damages were intire, secus si feveral.

S. C. & Salk.
119.
Vid. Post. 647.

Ruffel versus Comb. Mich. 2 Ann. B. R.

WHERE Matter may be said as Aggravation of Trespas, for which alone Trespas lies not. Vide this Case, Title Baron and Feme, Pl. 12. Pag. 119.

S. C. & Mod.
80.

Day versus Muskett. Mich. 2 Ann. B. R.

(11.)
Trespas laid
in a former
King's Time,
contra pacem
of the pre-
sent, ill on
Demurrer,
but cur'd by
Verdict.

TRESPASS quare Vi & Armis primo die Febr. Ann. Dom. 1701. Clausum suum fregit, and concludes contra pacem Domini Anne nunc Regine, &c. The Defendant pleads, That he and another did the Trespas jointly, and that the Plaintiff re-

relaxavit to the other. To that it was replied non est factum, to which it was demurred, and Judgment pro Def. for King William died the 8th of March 1701, so it was contra pacem Regis, and not contra pacem Regina; the Omission of contra pacem had been only Matter of Form, but here it is repugnant, for the Court must take Notice of the Demise of the King; that is the Description of the Trespas, and a Trespas done contra pacem Regis could not be given in Evidence: Indeed a Verdict would have added it.

Yelv. 66.
Vide ante
636.
1 Hawk. 144.
2 Hawk. 143.

Green *versus* Goddard. . . . Ann. B. R.

TRESPASS, Assault and Battery laid on the first of October, 3 Reg. The Defendant as to the Vi & Armis plead. et Non cul. And as to the Residue says, That long before, viz. on the 13th of September, a Stranger's Bull had broke into his Close, that he was driving him out to put him in the Pound, and the Plaintiff came into the said Close, & manu forti impedit ipsum ac Taurum præd. rescussisse voluit, & quod ad præveniend. &c. ipse idem Defend. parvum flagellum super querentem molliter imposuit, quod est idem residuum, &c. absq; hoc quod cul. fuit ad aliquod tempus ante eundem 13 Diem. The Plaintiff demurred; 92. Eyre for the Plaintiff argued, That they should have requested him to go out of the Close. 19 H. 6. 31. 11 H. 6. 23. 2 Ro. Tresp. 547, 548, 549. and that flagellum molliter imponere is repugnant. 1 Sid. 4. Lastly, The Traverse is short, and no Answer to the Time after. 1 Leon. 307. 3 Cro. 87. 1 Ro. Rep. 406. Et per Cur'. There is a Force in Law, as in every Trespas quare clausum fregit: As if one enters into my Ground, in that Case the Owner must request him to depart before he can lay hands on him to turn him out; for every Impositio manuum is an Assault and Battery, which cannot be justified upon the Account of breaking the Close in Law, without a Request. The other is an actual Force, as in Burglary, as breaking open a Door or Gate; and in that Case it is lawful to oppose Force to Force, and if one breaks down the Gate, or comes into my Close Vi & Armis, I need not request him to be gone, but may lay hands on him immediately, for it is but returning Violence with Violence: So if one comes forcibly and takes away my Goods, I may oppose him without any more ado, for there is no Time to make a Request.

(12)
Where in entering H.'s Close, there is only Force in Law, H. cannot lay Hands on the Trespasser before Request to depart; otherwise where there is actual Force.

2dly, Powell J. held, That the Attempt to take and rescue the Bull was an Assault on his Person, and a Taking from his Person; for if H. is driving Cattle on the Highway, and one comes and takes them from him, it is Robbery, which cannot be without a Taking from his Person, quod non fuit negatum. Vide 19 H. 6. 66. 2 Ro. 549. Placito 11. 1 Ro. Rep. 19.

Taking Cattle from H. is a Taking from his Person.

Where Traverse goes to the Matter, all before is Inducement and waiv'd; otherwise where to Time only.

3dly, They held the quod est idem residuum good without a Traverse, and therefore no Traverse was necessary; [Vide 1 Saund. 8.] and consequently it is no Matter tho' it be short, for here it goes only to the Time; where quod est idem avers it to be the same. Et per Holt C. J. Where a Traverse goes to the Matter of a Plea, &c. all that went before becomes Inducement, and is waived by the Traverse; but where a Traverse goes to the Time only, what was set out in the Plea before, does not become bare Matter of Inducement, nor is it waived by the Traverse. Sed adjournat. M. Eyre pro quer. M. Brydges pro Def.

Cockcroft *versus* Smith. Pasch. 4 Ann. B. R.

(11)
Son Assault demesne, a good Plea in Malhem where the first Assault was violent.

IN Trespals for an Assault, Battery and Malhem, Defendant pleaded Son Assault demesne, which was admitted to be a good Plea in Malhem: But the Question was, What Assault was sufficient to maintain such a Plea in Malhem? Holt C. J. said, That Wadham Wyndham J. would not allow it if it was an unequal Return; but the Practice had been otherwise, and was fit to be settled: That for every Assault he did not think it reasonable a Man should be hanged with a Cudgel; that the Meaning of the Plea was, That he struck in his own Defence: That if A. strikes B. and B. strikes again, and they close immediately, and in the Scuffle B. malheims A. that is Son Assault; but if upon a little Blow given by A. to B. B. gives him a Blow that malheims him, that is not Son Assault demesne. Powell J. agreed, For the Reason why Son Assault is a good Plea in Malhem, is, because it might be such an Assault as endangered the Defendant's Life.

Newman *versus* Smith, & al. Trin. 5 Ann. B. R.

(14)
Trespals for entering the Plaintiff's House and Assaulting him. Assaulting and menacing his Servants may be laid by Way of Aggravation. Vide ante 593, 594. 1 Salk. 119.

TRESPASS de eo quod the Defendants tiel jour & ann apud W. upon the Plaintiff insult. fecer. & ipsum verberaver', &c. Ita quod de vita, &c. & domum ipsius quer. apud W. præd. adtunc & ibidem freger. & intraver. & quer. in quiet. usu & occupatione domus præd. disturbaver. & impediver. necnon in præd. quer. & filium suum & M. N. & R. N. filias præd. quer. & E. N. servam suam minas de verberatione eorum adtunc & ibidem imposuer. & ipsos injuriis & gravaminibus, viz. insult. & affraitis adtunc & ibidem affecer. Et alia enormia, &c. Upon Not guilty it was found for the Plaintiff, and M. King moved in Arrest of Judgment upon 2 Cro. 501. that the Matter could not maintain Trespals for beating his Servant or Children without special Damage, which ought to be specially shewed: M. Eyre answered

swered, and so it was resolved, That the Action was for the Breaking and Entry, and the farther Description is only to shew the Court how enormous that Trespass was; and the Plaintiff could not recover Damages for losing the Service of his Child, or Servant, nor could that be given in Evidence; because the Plaintiff might have a proper Action for that purpose: But the Circumstances mentioned might be proved in Evidence to aggravate Damages for the Defendant's Trespass by breaking and entering. And whereas it was said, *ibidem* refers to the Will, and it should be in *domo prædicta*, 'tis plain the adverb ties it to the same Time, and then it could not be at a different Place at the same Point of Time.

Layton *versus* Grindall. Pasch. 8 Ann. B. R.

TRESPASS for entering the Plaintiff's house and taking *separales claves pro apertione ostiorum domus prædictæ*. Upon Not guilty pleaded, the Plaintiff had a Verdict, and it was objected, that the Taking of each Key was a distinct Trespass, and might require several Answers, and the Kind and Number ought to be ascertained. Vide *Playter's Case*, 5 Co. 34. 1 Vent. 53. 2 Vent. 262. But to this it was answered and resolved, That the Keys are sufficiently ascertained by Reference to the House. Vide *Al. 9. Sty. 43. 1 Vent. 114. 2 Cro. 485.*

(15)
Trespass for entering his House and taking several claves pro apertione ostiorum domus, &c. good without shewing Number.

Anonymus. Pasch. 8 Ann. B. R.

TRESPASS for taking his Cattle: The Defendant pleaded that he was possessed of a Close for a Term of Years, and the Cattle trespassed therein, &c. The Plaintiff demurred, and Judgment was given for the Defendant, tho' he shew'd no Title, but justified upon a bare Possession: And this Difference was taken by Holt C. J. Where the Action is transitory, as Trespass for taking Goods, the Plaintiff is foreclosed to pretend a Right to the Place, nor can it be contested upon the Evidence, who had the Right; therefore Possession is Justification enough: But in Trespass *quare clausum fregit* it is otherwise, because there the Plaintiff claims the Close, and the Right may be contested.

(16)
Where the Trespass is transitory the Plaintiff cannot pretend a Right to the Place, therefore the Defendant may justify by Possession only.

Vide 7 Co.
2, 3, 4, 7, &c.
9 Co. 30, 31,
32, &c.

1 Mod. 55.

(1)
Trial at Bar.
Vide ante 625,
Post 648, 649.

(2)
New Trial
denied in Case
for negligently
keeping
his Fire.

(3)
New Trial.

(4)

(5)
New Trial.
Vide post pl.
7, 8, 13, &c.

(5)
No new Trial
against the
Equity of the
Cause.
Post pl. 11.

TRIAL

Anonymus. Pasch. 5 W. & M. B. R.

A Cause cannot be tried at Bar where the Action is laid in London, by Reason of their Charter.

Smith versus Brampton. Mich. 7 Will. III. B. R.

CASE for negligently keeping his Fire, Verdict pro Def. The Verdict was against Evidence, a new Trial was denied, because it is a hard Action: Per Note, Action against the Hundred for a Robbery, Verdict pro Def. and new Trial granted. 1 Sid. 58.

Smith versus Frampton. Mich. 7 Will. III. B. R.

IN Case for negligently keeping his Fire, per quod the Plaintiff's house was burnt, the Verdict was for the Defendant: And after great Debate and Consideration a new Trial was denied, because it is a hard Action, and the Jurors are Judges of the Fact: And per Holt C. J. declared, he was not satisfied with that Verdict. Quære whether the same Case with the precedent,

Anonymus. Pasch. 8 Will. III. B. R.

THE Court never, or very rarely, grants new Trials in Actions for Torts. Per Holt C. J.

Smith versus Page. Mich. 8 Will. III. B. R.

IN Ejectment the Plaintiff was a Mortgagee, and claimed by Surrender, whereas the Land was not Copyhold; and the Defendant claimed only by a voluntary Conveyance. The Verdict was for the Plaintiff, and the Court could not set it aside, and grant a new Trial against the Honesty of the Cause.

Hatchell

Hatchell *versus* Griffiths. Mich. 8 Will. III. B. R.

ISSUE was joined in Trinity-Term 1695, and Notice then given for Trial next Hilary, but no farther nor other Proceeding till Trinity Matation 1696, and then the Plaintiff gave a new Notice of Trial, viz. fourteen Days Notice for next Hilary, when he accordingly tried the Cause and had a Verdict, but because there was no Proceeding within a Year after the first Notice, it was set aside: Sed Nota, Notice within the Term had been a Proceeding within the Year, and made Notice for fourteen Days good Notice of Trial.

(6)
Notice of Trial.
See 6 Mod.
18, 17.
1 Mod. 11.
Ante 457.

Anonymus. Mich. 8 Will. III. C. B.

A New Trial was granted because the Counsel were absent, not thinking the Cause would come on, and no Defence was made; but a like Motion was denied in B. R. per Holt C. J. Also in one Coppin's Case, a Cause came on at seven in the Morning, and an old Witness could not rise to be there Time enough; but it was denied, unless he would make Affidavit of what he knew, and would answer so that the Court might judge of it, and how it was material.

(11)
S. C. 1 Salk.
173.
Salk. 122.
New Trial
for the Absence of Counsel or Evidence. Q.
Vide 6 Mod.
21, 22, 24.
Farr. 156.
Falk. 599.

Dent *versus* The Hundred of Hertford. Mich. 8 Will. III. B. R.

A New Trial was granted upon Affidavit, that the Foreman declared the Plaintiff should never have a Verdict whatever Witnesses be produced.

(8)
See Farr. 11.
& 12.

King *versus* Burdett. Mich. 8 Will. III. B. R.

A New Trial was moved for upon Affidavit, that the Jury took an Act of Common-Council out, which they had printed Labels were spread against the Defendants; and it was denied: For as to the first it differs from the Lady Ives's Case, where they took a Map of one Side, which was Evidence on neither Side: But this was an Act of neither Side, and Evidence on both; but admitted to be irregular. Et per Holt C. J. So if a Jury eat at their own Charge, it is fineable, and the Verdict shall stand; otherwile it is at the Charge of one of the Parties, and the Verdict is found for him. Vide Mo. 599.

(9)
Jury after going from the Bar sent for an Act of Common-Council given in Evidence, and new Trial denied.

Salisbury *versus* Proctor. Hill. 8 Will. III. B. R.

(10)
Trial refused
to be put off
till Suit in
the Spiritual
Court deter-
mined. 60 M.

IN an Action by an Administrator the Court was moved to put off the Trial, till a Suit pending in the Spiritual Court concerning the Right of Administration was determined, which was to come on, which was denied per Cur. For we cannot take Notice of Suits in the Ecclesiastical Courts.

Deerly *versus* The Dutcheffs of Mazarine. Hill. 8 Will. III. B. R.

(11)
New Trial
not granted
for mistake
Point of Law
against the
Honour and
Equity of the
Cause. ante
pl. 3.

UPON Non Assumpsit pleaded, the Jury found for the Plaintiff, tho' the Dutcheffs gave good Evidence of her Coverture; and the Court would not grant a new Trial, because there was no Reason why the Dutcheffs who lived here as a single Sole should set up Coverture to avoid the Payment of her Debts.

Thermolin *versus* Cole. Hill. 8 Will. III. B. R.

(12)
No new Trial
for Want of
Notice after
Defence
made.

If the Defendant appears and makes Defence, he shall never have a new Trial for Want of due Notice.

S. C. ante
417.

Dominus Rex *versus* Bear. Pasch. 9 Will. III. B. R.

(13)
Indictment
for Libel, De-
fendant ac-
quitted, and
new Trial
denied.
N. B. Farell.
31 & 37.

IN an Indictment for a Libel, the Defendant was by the Jury acquitted, and the Attorney General moved for a new Trial, but it was denied: And the Court said, That anciently it was never done in criminal Cases where Defendants have been acquitted; Laterly where it has been a Verdict obtained by Fraud or Perjury, or striking away Witnesses, &c. it has been done, but never yet was done merely upon the Reason that the Verdict was against Evidence. *Dowdell v. The King*, 10 M. 2. B. R. per Holt C. J. And in *Ex parte* of *Perjury* we never do it, because the Verdict is against Evidence, but if you have a Trick, as no Perjury, &c. it is not sufficient. *Vide* 1 Lev. 2. 114. *Ne terra* in *def. Giddings*, called in *Tort* & *Concord*. To give a new Trial, *vide* *Ex parte* of *Perjury*, *ante* pl. 3.

Ex parte of *Perjury*, 336. The Defendant in Error took out a Record of his Verdict, and proceeded to Trial at the first Assizes after which the Jury held good, and a new Trial ensued.

Tur.

Turbervil versus Stamp. Mich. 9 Will. III. B. R.

H shall not make for a new Trial after Motion in Arrest of Judgment; but after a Motion for a new Trial, he may move in Arrest of Judgment. So 'tis of a Writ of Enquiry; after Motion in Arrest of Judgment, the Defendant cannot move for a new Trial. *West versus Cole.* Mich. 10 W. 3. B. R. The same Point was held in *C. B. Pasch. 8 W. 3. Philips versus Crabb.*

(14)
No Motion
for new Trial
after Motion
in Arrest of
Judgment.

Starr versus Wade. Pasch. 10 Will. III. B. R.

Lessor thought Crover against the Lessee, for Trees cut down; yet because the Lessee did it in Trenching, and the Plaintiff had thereby greater Advantage, tho' the Jury found for the Defendant, yet the Court would not grant a new Trial.

(15)

Wits versus Polahampton. Mich. 10 Will. III. B. R.

It was moved for a new Trial, because the Defendant having pleaded a Composition, had forgot to carry down Witnesses to prove the Subscriber's Hands; and the Motion was denied, because the Debt was honest. And *Holt C. J.* remembered where Debt on a Bond was brought against an heir, who pleaded *riens per Discont.* but the Verdict went against him by omitting to bring the Settlement to the Trial; and the Court being moved, refused to grant a new Trial, because it was an honest Debt.

(16)
New Trial
for Omission
of the Party
refused.

Anonymous. Mich. 10 Will. III. B. R.

In Covenant to pay a Sum certain, viz. 100 l. and a Grant that upon Default it should be lawful for the Covenantor to enter and take the profits; the Defendant pleaded Entry and Prizal del Profits in Bar; and Judgment was for the Plaintiff upon Demurrer; and upon the Writ of Enquiry the Jury gave Damages; and upon a new Writ of Enquiry was awarded; for what might have been brought upon this Covenant; and this is not the case where the Jury are to give no more Damages than are proved; but here the Jury are to give the whole, unless the Defendant moves something in mitigation, which was not done in this Case; therefore the common Rule being, viz. That in new Trials, or new Writs of Enquiry, shall be for too small Damages; yet there being a Continuance in this Case, it differs,

(17)
New Trial or
Writ of In-
quiry not
granted for
too small Da-
mages, unless
where there
is a Trick.

Sparks *versus* Spicer. Hill. 10 Will. III. B. R.

(18)
New Trial
rarely grant-
ed in hard
Actions.

OR was ordered by the Judge of Assize to be hanged in Chains; the Owner hung him in private solo; the Owner brought Trespass, and upon Not guilty the Jury found for the Defendant, and the Court would not grant a new Trial, it being done for Convenience of Place, and not to affront the Owner.

Lord Sandwich's Case. Trin. 11 Will. III. B. R.

(19)
Trial at Bar,
where to be
granted or
denied.
Vide pag.
645, 644, 649,
& 651.

WHERE there is Value or Difficulty, no sort bound of com-
mon Right to grant Trials at the Bar. Inquisitiones de
grossis & pluribus Articulis, quæ magna indigent examinatione,
capiantur coram Justiciariis de Bancis. Stat. West. 2. c. 36. Per
Holt C. J. Pet Trin. 1 Ann. it was denied, because the Plaintiff
was poor, unless the Defendant would agree to take Nisi Prius
Costs. Et postea scil. Trin. 4 Ann. B. R. Between the Trustees
of my Lady Sandwich and my Lord Sandwich, tho' the Estate
was 3000 l. per Annum, a new Trial at Bar was denied, be-
cause the Title of the Lease of the Plaintiff being from the De-
fendant himself, there would be nothing to do but to prove the
Executing of a Conveyance.

Argent *versus* Sir Marmaduke Darrell. Hill.
11 Will. III. B. R.

(20)
New Trial
after Trial at
Bar refus'd in
Ejectment,
because not
conclusive.
Vide post
650. pl. 27.
Ante 646.
pl. 13.
N. B. Farell.
31 & 37.

IN Ejectment after a Trial at Bar, Serjeant Wright moved
for a new Trial, because the Verdict was contrary to Evi-
dence; the Court thought so too. Rokeby was for it on the
Case in Style, ceteri contra; for per Holt C. J. The Reason of
granting new Trials upon Verdicts against Evidence at the As-
sises is, because they are subordinate Trials appointed by West. 2.
c. 36. ubi de paucis Articulis & facillibus examinatione. And there
have been new Trials anciently, as appears from this: That it is
a good Challenge to the Jury that he hath been a Juror before in
the same Cause; but we must not make our selves absolute
Judges of Law and Fact too; and there never was a new Trial
after a Trial at Bar in Ejectment; but in Case of Ill Prognostic for
the Plaintiff may bring a new Ejectment: Upon this a new Trial
at Bar was denied in Sir Richard Temple's Case, where the Jury
found a Point of Law on the Statute of Waltham, against
the Opinion of the Court.

Anonymous. Hill. 11 Will. III. B. R.

IN Assumpsit for Money won at Play, the Trial shall not be stayed till an Indictment pending for the Cheat be tried.

Anonymous.

IN Assumpsit the Issue was, married or not married, and the same Point was pending and ready to be determined in the Spiritual Court: And it was held no Cause to put off the Trial, for the Court cannot take Notice of that.

Turner *versus* Barnaby. Pasch. 1 Ann. B. R.

IF H. would have a Trial at Bar in Easter-Term, he ought to move for it in Hilary-Term; if in Michaelmas-Term, he ought to move for it in Trinity-Term, except where Land lies in Middlesex; and anciently there was no other Notice given of such Trial, but the Rule in the Office; but now there must be sixteen Days Notice. Per Holt C. J.

Anonymous. Mich. 1 Ann. B. R.

A New Trial shall be granted if the Judge of Nisi Prius misdirect the Jury, because those Trials are subject to the Inspection of the Court. Per Holt C. J.

Clerk *versus* Udall. Mich. 1 Ann. B. R.

UPON a Trial at Nisi Prius the Jury gave excessive Damages, and for this Cause a new Trial was granted. The second Jury gave the same Damages again, and a second new Trial was moved for and denied, because there ought to be an End of Things; but several Cases were cited which the Chief Justice allowed, That where upon the second Trial the Jury have doubled the Damages, a third Trial had been granted.

(21)

(22)

Trial not put off for Suit pending in the Ecclesiastical Court on the same Matter.

(23)

When Trial at Bar to be moved for. Vide ante 625, 644, 648, & post 651.

S. P. Farell. 53, 64. Vide 6 Mod. 222, 242.

(24)

New Trial for Misdirection.

S. C. Farell. 106.

(25)

New Trial for excessive Damages, and the same Damages given, and third Trial refused. See 6 Mod. 22, 242.

The

S. C. Farell.
84, 85.
1 Salk. 201.
pl. 4.

(26)
No new Trial
in inferior
Courts.

S. C. 1 Salk.
258.
Ante 648.
Farell 70.
121, 156.

(27)
New Trial
denied after
Trial at Bar.

Gay & Cross.
Farell. 37.

The Case of the Mayor and Aldermen of Bristol.

Mich. 1 Ann. B. R.

IT was held by the Court that a new Trial cannot be granted in an inferior Court; for they are not like Trials by Nisi Prius, which are subordinate upon Writs issuing out of this Court, over which the Court have Authority and Inspection; but this was a new Trial a Year after the first, which the Court blamed.

Fenwick versus Lady Grosvenor. Hill. 1 Ann. B. R.

IN Ejectment after a Trial at Bar a new Trial was moved for on Affidavits that several Witnesses absented themselves in Holland by reason of a Report spread abroad there, that one of the Defendant's Witnesses was confined by Imprisonment; but it was denied, because it did not appear that the Plaintiff did spread it, or occasioned the spreading of it: The Court was dissatisfied with the Verdict, but cited Cross's Case for a false Return of a Mandamus tried at Bar, and by Consent of all Sides one Point was to be found Specially, yet the Jury found a general Verdict, and the Court would not grant a new Trial. It has never been done here but upon Issues out of Chancery, which being only to satisfy the Conscience of the Chancellor, are not stricti Juris. So a new Trial was denied, contra opinionem (ut videbatur) Capital. Justiciar.

Ashwin versus Corbill. Mich. 2 Ann. B. R.

(28)
A Term's
Notice.
Vide ante
624, 514.

IF a Cause hath lain at Issue four Terms and no Proceeding, there must be a full Term's Notice of Trial, excluding the Term wherein Issue was joined.

S. C. ante 457.
6 Mod. 57.

Lazier versus Dyer. Mich. 2 Ann. B. R.

(29)
Going out a
Venire facies
tested the last
Day of the
Term, not a
Proceeding
within Term
as to Notice
of Trial.

IT came to be a Question, Whether the Going out of a Venire facies after the Expiration of the four Terms, was a Proceeding within the Term; because it bears Teste the last Day of the Term, and has Relation to the Term? And the Court held it was not; for tho' it be legally a Proceeding of the Term, yet it is not so in Fact. Et Nota, Where 'tis an Issue out of Chancery, Notice of Trial to the Solicitor in that Court is good; for as to this, they are but as one Court.

Sir Samuel Astrey's Case. Hill. 2 Ann. B. R.

S. C. 2 Mod.
651.
6 Mod. 123.

UPON a Scire facias brought against Sir Samuel Astrey, for his Place of Clerk of the Crown in the Court of King's Bench, and Issue joined thereupon; Sir Samuel Astrey moved that the Issue might be tried at the Bar. The Attorney General opposed it; but the Court said a Trial at Bar was never denied to any Officer of the Court, nor hardly to any Gentleman at the Bar: And tho' Mr. Attorney was never bound to consent to a Trial by Nisi Prius in the Queen's Case, yet they did not see how he could refuse a Trial at Bar where it was reasonable to try it there; for the Stat. West. 2. cap. 3. is atteterminetur, that they may be determined there, qui magna indigeant examinatione.

(30)
Trials at Bar
not denied to
Officers of
the Court, or
Barriers.
Vide ante
615.
2 Keb. 133,
164.
1 Cro. 248.

Way versus Yally. Trin. 3 Ann. B. R.

S. C. 6 Mod.
194.

LESSOR brought Debt for Rent against his Lessee, upon a Demise at London, of Lands in Jamaica. The Defendant pleaded to the Jurisdiction of the Court, That the Matter ought to be tried in Jamaica; and it was urged that the Lessor cannot bring Debt here against the Assignee of a Term of Lands in Ireland, and that if Entry and Duffer were pleaded, it could not be tried here; and in this Case the Right of the Plaintiff and Defendant depends on foreign Laws which cannot be given in Evidence here. Et per Cur'. Where an Action is local it must be laid accordingly; therefore if the Lessor declares on the Possibility of Estate, and that lies in Ireland, the Action must be brought there, for the Estate is local; therefore such Lessor cannot maintain Debt here against an Assignee of a Term in Ireland; for the Action is founded on a Possibility of Estate: Otherwise where it is founded on a Possibility of Contract, which is transitory; as Debt for Rent by Lessor against Lessee; for that may be maintained where the Land lies not. Here it is by the Lessor against the Lessee on the Possibility of Contract; and if a foreign Issue, which is local, should happen, it may be tried where the Action is laid; for that Purpose there may be a Suggestion entered on the Roll, That such a Place in such a County is next adjacent; and it may be tried here by a Jury from that Place, according to the Laws of that Country; and upon Nil debet pleaded you may give the Laws of that Country in Evidence.

(31)
If the principal Cause
be within the
Jurisdiction,
and an Issue
depending on
foreign Laws
arises, it may
be tried in
the next
County, and
foreign Laws
given in Evidence.
See 1 Lev.
143.
6 Mod. 228.
1 Jon. 43.
44.
2 Saund. 138.
Hob. 37.

S. C. 1 Salk.
380.
6 Mod. 245.

Domina Regina *versus* Sir Jacob Banks. Mich.
3 Ann. B. R.

(32)
Trial by Pro-
viso cannot
be in the Case
of the Crown;
nor Nisi Pri-
us, unless by
Warrant
from the At-
torney-Gener-
al.
6 Mod. 246,
&c. *Infra*.

SIR Jacob Banks was indicted at the Quarter-Sessions in Berks, and the Indictment was removed hither by the Prosecutor, and now both the Prosecutor and Defendant made up the Record, took out Process, and carried down the Cause to Trial at the Assizes; and the Defendant put in his Record first, tried it, and was acquitted: The Prosecutor upon this moved for a new Trial, and had it.

Et per Cur. 1st, Before the 5 & 6 W. & M. c. 11. and 8 & 9 W. 3. c. 33. H. indicted in any County might remove it into B. R. by Certiorari, and never was bound by Recognizance to try it, unless in London and Middlesex; That by this Means the Defendant was out of Court, & sine die, and new Process was to be awarded on which he might be outlawed, unless he came in gratis, which occasioned great Delay, and was the Cause of making those Acts.

Upon Removal
of Indict-
ment by the
Prosecutor, if
Defendant
comes in by
Process, he
shall give Se-
curity to try.

2dly, That Removals by Defendants are provided for, but Removals by Prosecutors are not within those Acts; and that this Removal being before the Plea pleaded, the Defendant was out of Court & sine die, but may come in gratis, or be brought in by Process; and in the last Case on Pleading shall give Security to try it, which he is not obliged to do when he comes in gratis.

In what Cases
the Defen-
dant may car-
ry down a
Cause by Pro-
viso.

3dly, That in Civil Actions the Defendant shall never carry down a Cause by Proviso, till there be a Laches in the Plaintiff; except in Causes where the Defendant is as a Plaintiff, as in Replevin, Prohibition, Quare Impedit, which are to have Return, Consultation, and Writ to the Bishop.

2 Lev. 5, 6,
&c. *infra*.
6 Mod. 240.
& 123.
Savil. 2.
2 Sid. 336.

4thly, There can be no Trial by Proviso in a Cause of the Crown; because there can be no Default nor Laches, nor can the Crown be compelled to try any Cause by Nisi Prius; and therefore every Cause of the Crown in this Court must be tried at Bar, unless the Attorney-General allows a Warrant of Nisi Prius, which implies his Consent to try the Cause in the Country.

5thly, That as in Indictments of Treason or Felony, if the Attorney-General will delay, the Court may give the Defendant Leave to bring on the Trial as they see fit: (and so it has been done) So in Indictments for Misdemeanors, as in this Case, The Defendant may in the first Instance by the Consent of the Prosecutor and Leave of the Attorney-General, carry down the Cause to Trial, but it shall not be allowed by Surprise on the Attorney-General, as here in this Case, and also without Consent of the Prosecutor, or any Default in him.

6thly,

6thly, It was ordered to be a Rule hereafter, That when an Indiamment is removed hither by the Prosecutor, the Defendant shall not carry it down to Trial without Leave of the Court on Motion. 6 Mod. 247.

Highmore *versus* Walker. Mich. 4 Ann. B. R.

IN a Cause to be tried at the Sittings, the Defendant entered a Ne recipiatur; and the Question was, Whether the Plaintiff could go on at the next Sittings without a new Notice? It was agreed, That if no Ne recipiatur had been entered, there must have been two Days Notice. The Clerks upon the principal Question thought no Notice necessary; their Reason was, because the Defendant himself had hindered the Plaintiff's Proceeding, and therefore ought at Peril to attend the next Sittings. But Holt C. J. contra. The Notice fell to the Ground with the Trial: A Rule was made, That where a Ne recipiatur was entered, the Plaintiff shall give Notice the same Sittings, and before they are over, that he will proceed to Trial the next Sittings: And it was said, that if a Cause be not entered two Days before the Sittings, the Defendant may enter a Ne recipiatur. (33) Two Days Notice to be given after Ne Recipiatur at Sittings.

Dunkly *versus* Wade. Pasch. 5 Ann. B. R.

IN Case for negligently keeping his Fire, a Verdict was found for the Plaintiff, and a new Trial granted. But per Cur. Had a Verdict been for the Defendant, we would hardly have granted a new Trial, because 'tis a hard Action. (34) Hard Action.

Ford *versus* Tilly.

S. C. Farrell.
156, 157.

AN Inquiry found four voluntary Escapes, for which Ford, Warden of the Fleet, forfeited his Office: Issues hereupon were tried in B. R. at the Bar. One Escape was proved by a Witness, who was asked if he was never burnt in the hand for stealing a Tankard; he answered, No. A new Trial was moved for upon producing the Record of the Conviction, and the Court denied the Motion, 1st, Because it was a Trial at Bar. 2dly, It is no Reason for a new Trial that you for the Defendant came not prepared; and the Chief Justice said Soams's Case was a hard Case. Vide 3 Keb. 365, 369. 2 Lev. 114. Postea Pasch. 4 Ann. B. R. Between Cockcroft and Smith. That the Party's Evidence was not ready, was held no Reason for a new Trial, tho' at Nisi Prius: And a new Trial was denied. (35) New Trial not granted for Defect of Preparation. See 6 Mod. 22, 221, 242. Ante 645.

Trover and Conversion.

Ante 597.
1 Lev. 99.
2 Lev. 201.
3 Lev. 336.
5 Mod. 182,
&c.
6 Mod. 151,
170, 212.
Vide 4 Mod.
116,
Yelv. 68.

Arnold *versus* Jeffreyson. Mich. 9 Will. III. C. B.

(1)
Trover de
scripto suo
obligatorio,
good.

TROVER de scripto suo obligatorio per quod tent. & obligat. fuit cuidam J. S. In Arrest of Judgment after Verdict for the Plaintiff, it was held good; for it might be given to the Plaintiff, and so shall be intended, and then it was scriptum suum; and it is no Absurdity, tho' it were made by him to another; for it is only a Description of the Deed.

Hartford *versus* Jones. Mich 10 Will. III. B. R.

(2)
Special Plea
in Trover
must confess
a Conversion.
Lutw. 1538.
1 Mod. 244.

In Trover and Conversion the Defendant pleaded, That the Goods were cast away, and they saved and detained them till they were paid for their Pains: On Demurrer Holt C. J. held, That they might retain for Payment, as a Carrier for his Hire; and Salvage is allowed by all Nations: He that serves another ought in Reason to be paid for his Service; but the Plea is naught, for if the Detainer be lawful, he does not confess a Conversion: I never knew but one Special Plea good in Trover, viz. Yelv. 198. And the Rule was in the principal Case, to waive the Plea and plead Not guilty. Vide 2 Cro. 68, 69. 3 Cro. 262.

Hartford *versus* Jones. Pasch. 10 Will. III. B. R.

(3)
Trover for
20 Ounces of
Cloves and
Mace, well,
without
shewing how
much of each,
or that they
were mix'd.
ill in Deti-
nue.
Quer. Vide
5 Mod. 181,
324.
1 Lev. 48.
3 Lev. 18.
2 Lev. 85,
176.

TROVER for twenty Dunces of Cloves and Mace; after a Writ of Enquiry on a Judgment by Default, Holt C. J. doubted whether it was good, because it was not said, how much Cloves and how much Mace; or that it was so many Dunces commixt; but he said these were Incertainties, and that if this was compassed in another Action, this Recovery would be a good Plea in Bar. In Detinue, this would be ill for Incertainty; for the Sheriff could not tell how much of one and how much of the other to deliver. The Court gave Judgment for the Plaintiff, without taking Notice of another Exception,

tion, viz. That it was also pro viginti parvis Instrument. car- 3 Mod. 70.
pentar', vocat. twenty small Carpenter's Tools. 2 Saund. 74. 4 Mod. 324.
2 Ven. 76. Style 345. 1 Mod. 289. 2 Ven. 677. 5 Mod. 324.
1 Sid. 60.
1 Lev. 48.
Farell. 142.

Anonymus. Trin. 3 Ann. Coram Trevor C. J. At
Nisi Prius at Guildhall.

TROVER lies not against a Carrier for Negligence, as
for losing a Bar, but it does for an actual Wrong; as if
he break it to take out Goods, or sell it. Per Cur. Pasch. 7. W. 3.
B. R. And therefore Denial is no Evidence of a Conversion, if the
Thing appears to have been really lost by Negligence; but if that
does not appear, or if the Carrier had it in Custody when he de-
nied to deliver it, it is good Evidence of a Conversion. Per
Trevor C. J.

(4)
Where Tro-
ver will lie
against a Car-
rier.

Where Denial is a Conversion. Vide 10 Co. 56. 1 Cro. 262.
1 Lev. 173. 1 Danv. 21. 2 Mod. 245. 3 Mod. 2. (1 Mod. 244.) 5
Mod. 426. 2 Show. Caf. 148, 175, 213.

TYTHES.

Hick *versus* Woodson. Hill. 8 Will. III. B. R.

In Attachment sur Prohibition, the Plaintiff declared of a
Custom in such a Hundred to pay no Tithe for Agistment of
Cattle barren: Issue was taken upon the Custom and found
for the Plaintiff, but Judgment was arrested with this En-
try, Et quia apparet Curia Domini Regis hic quod consuetudo
præd. nullius Vigoris in lege existit, ideo fiat Consultatio, &c. Et
per Cor.

1. Tithe of Agistment is due of common Right, because the
Grass, &c. which is eaten, is de jure titheable, and must have
paid Tithe if cut at Perfection: And the Court took this Dis-
tinction, viz.

That a Hundred or a County cannot prescribe in a Non deci-
mando, for a Thing that is in its Nature de jure titheable;
for, as no one single Person, or his Estate, can; no more, by the
same Reason, can the Hundred, which consists but of many single
Persons Estates. Vide March 26. 1 Ro. Ab. 653.

See 1 Mod.
229.
6 Mod. 261.
4 Mod. 336,
&c.

S. C. 4 Mod.
336 to 341.

(1)

County or
Hundred can-
not prescribe
in a Non deci-
mando for
Things
titheable of
common
Right; other-
wise if not
titheable of
common
Right.
Tithe of A-
gistment of
barren Cattle
due of com-
mon Right.
Vide Farell.
113, 137.

But

4 Mod. 336
to 341.
Lutw. 1316.

Far. II 113,
137.

But of Things which in their Nature are not titheable de jure, a Hundred or County may prescribe in a Non decimando, because they are discharged in such Case without a Custom to the contrary, and they do but insist on their ancient Right, and that Custom hath not prevailed against it: Ergo, the Case of Wood, 1 Ro. Ab. 64. Litt. Rep. 152. 153. and the Hearth-Penny, which is but a Modus for it, they allowed to be good Law; because Wood is not in its Nature titheable, nor within the Reason of titheable Things, which come not to Perfection every Year.

Vide 6 Mod.
261.
Ante 54.

Hill *versus* Vaux. Mich. 10 Will. III. B. R.

(2)
Modus to pay
a whole
Meal's Milk
such a Day,
and every 9th
and 10th
Night and
Morning af-
ter, till a
young Lamb
yeaned be
heard to bleat,
in lieu of
Tithe of
Milk, ill.
Modus to pay
Part of the
very Thing
that is Tithe,
not good, un-
less payable
in another
Manner.
Ls. 222.
6 Mod. 261.
Raym. 277.
1 Mod. 229.

ON a Suit in the Spiritual Court for Tithe of Milk, the Plaintiff moved for a Prohibition, suggesting a Custom in the Parish, that the 9th Day of May at Night, and the 10th Day of May in the Morning, the Parson was to have the whole Meal's Milk, and so every 9th and 10th Night and Morning, till a young Lamb yeaned should be heard to bleat, in Lieu of all Tithe of Milk. And the Case of thirty Eggs, in Lieu of all Eggs, was cited 1 Ro. Ab. 648, 651. Et per Cur'. A Modus to pay one Thing for another, or a Part of the same Thing in another Manner, may be good; but a Prescription to pay Part of the very Thing that is Tithe, can never be a good Modus, unless payable in some other Manner, so that the Parson has a Benefit by it. 3 Cro. 609. 2 Cro. 47. 1 And. 799. Mod. 229. Hob. 250. Raym. 277. 3 Bulst. 326. As to the Case of the thirty Eggs, he is bound to pay that, whether he has Pens or no, and he must pay it at a certain Time. But by this Modus the Parson may have nothing; as suppose a Lamb be heard to bleat before the 9th of May.

The Archbishop of York versus The Duke of Newcastle.
Mich. 3 Ann. In Scacc.

(3)
Modus of ten
Fleeces of
Wool and
two Lambs,
for all Tithe:
Court divid-
ed whether
good, or not.
Vide 1 Mod.
321.

HPrescribed to pay ten Fleeces of Wool and two Lambs in Lieu of all Tithes; and Price and Bury Barons, were of Opinion this was an ill Modus; because 'tis one Species of Tithe for another, and there is great Incertainty; for one Fleece may be twice as big, and three Times the Value of another. Vide 2 Lutw. 1032. 3 Cro. 786. 276. Mo. 909. 1 Ro. Ab. 649. Dy. 149. Hard. 174. Ward Chief Baron, and Smith Baron contra. 1st, A Modus is nothing but a real Composition, for or in Lieu of Tithes, or an annual Profit certain and permanent; and they held that the Payment of any one Chattel for Tithe, was or might be a good Modus as well as Money; for why might not the

Parson originally agree to take ten Fleeces for his Tithe, as well as a Penny? They admitted that Payment of Tithe of one Species, or Payment of a Modus for one Species of Tithe, could not be a Discharge as to another Species; but they held that this was not a Payment of Tithe, nor a Payment for a Species of Tithe; because it was to be paid at all Events, whether there be Sheep or no: And they denied the Case of 1 Ro. Ab. 651. and held it no more uncertain than to pay a Modus of ten Cheeses, which may differ vastly, both in Nature, Quantity, and Value; and it tends to the Disquiet of the Country to break in upon Customs and Usages, and it ought not to be done but on plain and manifest Reason.

Payment of
Tithe of one
Species not a
good Modus
for all.
Cro. El. 446.
Moor 277,
445.
Lutw. 1048,
1051.

Startupp *versus* Dodderidge. Pasch. 4 Ann. B. R.

A Modus to pay 2 s. in the Pound of the improved Rent in Lieu of all Tithes, was held naught; for that is to rise and fall as the Land is let, and the Parson cannot know it: And tho' a Custom to pay the double Value for a Fine may be good; yet that arises from a Man's Contract, which shall never be void where it may be reduced to any Certainty, and differs from this Case of a Modus, which ought to be as certain as the Duty, which is destroyed by it. Holt C. J. dubitante, upon a Motion for a Prohibition.

(4)
Modus to pay
2 s. in the
Pound of the
improved
Rent, ill.
Modus should
be as certain
as the Duty
destroyed by
it.

See Lutw.
1043 to 1053,
&c. *supra*.
Ante 551.

V.A.

V A R I A N C E.

Ante 434,
452.Bragg *versus* Digby. Pasch. 10 Will. III. B. K.

(1)
Variance be-
tween Writ
and Count
not pleadable
without cra-
ving Oyer of
the Writ.
Oyer. Vide
ante 497. &
post 701.

IN Case on several Promises by Original, the Defendant without craving Oyer of the Writ, pleaded Variance be-
tween the Writ and the Count, shewing particularly where-
in: And the Plaintiff demurred, and it was adjudg'd that
the Defendant should answer over; for he ought to have demand-
ed Oyer of the Writ before he could take Advantage of the Va-
riance; because, tho' the Writ is in Court, yet being not upon
the same Roll with the Count, the Defendant cannot plead to it
without demanding Oyer.

Holman *versus* Borough. Trin. 1 Ann. B. R.

(2)
Deed dated in
the Year of
our Lord set
forth with the
Year of the
King also, no
Variance

IN Covenant, the Plaintiff declared of a Deed of Covenant,
bearing Date the 30th of March Anno Domini 1701. Annoq;
Regni Willi. tertii nunc Regis Angl', &c. Decimo tertio, and
makes a Profer of the Deed, with a Cojus dat. est eisdem die &
Anno; Upon Oyer craved, the Deed was dated only thus, viz.
the 30th of March 1701. wanting Anno Domini, and likewise
Anno Regni. And tho' it was demurred to for the Variance, the
Court held it no Variance; for it was implicitly in the Deed.
Vide 41 E. 3. 23.

S. C. Far. 87.

Inclendon *versus* Crips. Mich. 1 Ann. B. R.

(3)
In Debt
where the
Quantity of
the Duty de-
pends upon
the Deed,
Variance is
fatal, and can-
not be help'd
by Remitti-
tur; other-
wise where
on Matter
extrinsic.

IN Debt, the Plaintiff declared on a Deed, whereby the Defen-
dant covenanted to pay the Plaintiff 35 l. per hundred for
every hundred of Wood in such a Place, and that he delivered
so many hundreds and one half, which came to 182 l. 10 s. The
Defendant demurred. Et per Cur'.

There can be no Apportionment, and the Demand for the half
hundred, is demanding more than can be due by the Contract;
and then the Question was, Whether a Remittitur could be en-
tered for that, and Judgment given for the rest. Et per Holt C. J.

Where

Where the Sum demanded depends on the Deed it self, and on nothing external, as in Case of Debt or Covenant to pay 20*l*. There can be no Remission; for the Quittance which is made is inconsistent with the Deed upon which the Debt that is demanded entirely depends; otherwise where it may be more or less by Matter external; as in Debt for Rent, or in the Case at Bar; in that Case, it may be demanded than is due, it may be remitted; for the Quittance is not inconsistent with the Deed: And as the Plaintiff is to recover on Trial what appears on Evidence to be due; so on Demurrer he is to have Judgment for no more than he ought to recover, and may remit the rest. Vide Hob. 178. Dy. 65. Yelv. 66. 10 H. 6. 5. 1 Saund. 206, 286.

Chetley *versus* Wood. Mich. 2. Ann. B. R.

IN Debt upon a Recognizance, the Plaintiff declared as on a Recognizance acknowledged in the Court of Common Pleas, coram G. Treby, Mil. & Sociis suis; Nul nisi Record was pleaded, and the Record produced was a Recognizance taken before Mr. Justice Nevil, at his Chambers in Serjeants Inn, and by him brought and delivered into Court; and it was adjudged that the Plaintiff had failed of his Record: For the Record is such as it is entered upon the Roll, and in Pleading must be so described: Accordingly the Court of King's Bench do enter all Recognizances as taken in Court, but the Common Pleas enter specially; so that their Recognizances bind from the Caption, ours from the Time of Entry; also upon theirs a Scire facias lies in either County; But on a Recognizance in B. R. in the County of Middlesex only; therefore these differ in Substance; and as to the Stage of declaring this Way, which was insisted on, the Chief Justice said it was against Law.

Vide ante 564, 600.
6 Mod. 331.
Far. 120, 131;
(4)
Recognizance in C. B. taken at a Judge's Chamber pleaded as taken in Court; Variance. Lutw. 1187.

Recognizance of Bail in C. B. binds from the Caption, in B. R. from the Entry only.

Roberts *versus* Harnage. Mich. 3. Ann. B. R.

IN Debt upon a Bond, the Plaintiff declared, quod cum the Defendant apud London, viz. in Paroch. beate Marie de Arcubus in Warda de Cheape per scriptum suum obligatorium concessisset se teneri to the Plaintiff in 40*l*. solvend. to the Plaintiff, &c. the Defendant craved Oyer, and the Bond was to the Plaintiff to pay 40*l*. to his Attorney or his Assigns; and was dated at Port St. Davids in the East-Indies.

non admodum
soli d. 2. et
et 3000. 10. 10.
et 3000. 10. 10.
et 3000. 10. 10.
et 3000. 10. 10.
et 3000. 10. 10.
et 3000. 10. 10.
et 3000. 10. 10.

(5)
Bond to A. in 40*l*. solvend. to his Attorney, declared on as payable to A. and no Variance.

The Defendant pleaded these Variations in Abatement, and upon Demurrer the Court held, 1st, That the first was no Variance; for Payment to the Plaintiff or his Attorney is the same Thing: The Teneri made it a Debt

to the Plaintiff, and in Consequence it may be payed to him; a Solvendum to any Body else would be repugnant. Vide 4 Ed. 4. 29. Sid. 395. 2 Keb. 81. But Payment to the Plaintiff's Attorney or his Assignee, is the same Thing.

2dly, The second Variance was held fatal, tho' it was objected that the Place was only used as a Venue, for the Dating made the Bond local; and it is not a Bond dated at London, because there is an express Date at Port St. Davids; but the Plaintiff might have declared, that the Defendant apud Port St. Davids in the East-Indies, viz. apud London, in Paroch', &c. for that was only using London, &c. for a Place of Trial. Broderick pro Quer. Parker pro Def.

Darby versus Anely. Trin. 4 Ann. B. R.

(6)
Writ of Error
of a Record
per billam,
the Record
returned per
breve de Pri-
vilegio,
quod d.

A Writ of Error was brought of a Judgment in C. B. reciting, quia in Recordo & processu ac etiam in redditione Judicii loquela quæ fuit in Curia nostra per billam. The Record was Attachatus fuit per breve de Privilegio e Curia hic emanan. ad respondend. the Plaintiff an Attorney of that Court juxta libertates, &c. de placito transgr. super Casum; and the Writ of Error was quashed for this Variance. Vide Lutw. 1634, 1637, 905.

Domina Regina versus Dr. Drake, Mich. 5 Ann. B. R.

(7)
Information
for a Libel,
Variance in
the Word
for not held
fatal upon
Evidence.
See 6 Mod.
168.
Raym. 74.
Tenor im-
ports a true
Copy.

INFORMATION, for that the Defendant being evilly disposed to the Government, did make a Libel, in which Libel were contained divers scandalous Matters secundum tenorem sequent', and in setting forth a Sentence of the Libel, it was recited with the Word nor instead of not; but note, the Sense was not altered thereby. The Defendant pleaded Not guilty, and this appearing upon Evidence, a Special Verdict was found. Et per Curiam. 1st, Cujus quidem tenor imports a true Copy. Vide Reg. 169. 8 Co. 78. Co. Ent. 508. 2 Saund. 121. in hac quæ sequitur forma, 5 Co. 53. Tenor is a Transcript, and implies the very same.

2dly, They held that this was not a Tenor, by Reason of this Variance; for not and nor are different; different in Grammar and different in Sense: And Powys J. held as to the Point where literal Omissions, &c. would be fatal, that where a Letter omitted or changed makes another Word, 'tis a fatal Variance; otherwise where the Word continues the same: And in the principal Case, no Man would swear this to be a true Copy.

3dly, The Court held, That there was a Difference between Words spoken and Words written; of the former there could not be a Tenor; for there was no Original to compare them with, as there is of Words written; and tho' there has been Attempts to plead a quorum Tenor of Words spoken, it has never been allowed; and therefore where one declares for Words spoken, Variance in the Omission or Addition of a Word, is not material; and it is sufficient if so many of the Words be proved and found as are in themselves actionable. Vide Dy. 75. 3 Cro. 503. Hard. 470. Otherwise in Debt upon a Bond; for upon Non est factum, any Variance is fatal.

4thly, Holt C. J. held, That in Pleading there were two Ways of describing a Libel or other Writing, by the Words or by the Sense: By the Words, as if you declare of a Libel, cujus tenor sequitur, &c. or quæ sequitur in his Anglicanis verbis sequentibus, you describe it by its particular Words, of which each is such a Mark, that if you vary, you fail in making good the Description. Vide Dy. 203. If a Man bring Trespass quare clausum fregit, and sets forth Abuttals and Bounds, and fails in proving them, he is gone; and yet he needed not to have described it after that Manner. 5thly, You may describe it by its Sense and Meaning; thus it is a good Information to shew, That the Defendant made a Writing, and therein said so and so, translating it into Latin; in which Case, Exactness in Words is not so material, because it is described by the Sense and Substance of it.

In declaring for Words spoken, Variance in Omission or Addition not material, if the Words proved are actionable; otherwise in a Tenor of Words written.

In pleading a Libel may be set forth in hæc verba, or by the Sense and Substance of it.

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VER-

It is a good Information to shew, That the Defendant made a Writing, and therein said so and so, translating it into Latin; in which Case, Exactness in Words is not so material, because it is described by the Sense and Substance of it.

In pleading a Libel may be set forth in hæc verba, or by the Sense and Substance of it.

V E R D I C T S.

Vide Co. Lit.

1 Saund. 539.

2 Saund. 97.

17 L. 353.

Raym. 993.

5 Mod. 359.

Buxendin *versus* Sharp. Pasch. 8 Will. III. C. B.

THE Plaintiff declared that the Defendant kept a Bull that used to run at Den; but did not say, *Sciens* or *Scienter*, &c. This was held naught after a Verdict; for the Action lies not unless the Plaintiff knows of this Quality, and we cannot intend it was proved at the Trial, for the Plaintiff need not prove more than is in his Declaration.

Jenkins *versus* Turner. Mich. 8 Will. III. C. B.

THE Plaintiff declared that the Defendant kept a Boar ad mordend. animalia consueta, and knew of this Partic, and that the Boar did bite, &c. This was held good after Verdict, tho' it was objected that these Animals may be Frogs or Wice, &c. for we must intend there was Proof of biting such Animals as will support the Action, otherwise the Judge and Jury would not have concurred in this Verdict, whereby the Plaintiff recovers Damages: And as to another Objection, viz. That the Defendant cannot know what Animals he is to defend against; 'twas answered, That no Evidence can be given of killing any Animals but what he has Knowledge of.

Acton *versus* Eels. Mich. 8 Will. III. B. R.

(3)
Damages given in Trespass laid at a Time not come, it shall be intended another Time was proved.
Vide 1 Mod. 292.

IN Trespass for Assault and Battery, and Verdict for the Plaintiff, it was moved in Arrest of Judgment, that the Time laid in the Declaration was not yet come. Et per Cur'. Then it is a Time impossible, and the Jury must be supposed to give Damages for another Trespass, and it is as if no Time had been alledged; otherwise if the Time had been laid after the Action and before the Verdict, for that shall be intended to be the Trespass that was given in Evidence, and that was after the Action brought; and so it is where it appears that the Jury give Damages for a Time not come, as in 2 Saund. 169. where the contrary cannot be

be intended, 3 Keb. 304. in Point. Judgment for the Plaintiff.
 Then Northey moved that they might have Leave to enter the
 Judgment as of the preceding Term, because the Plaintiff died
 since the Verdict. Curia, Enter it as you can, but at your Pe-
 ril, we give no Leave nor Directions about it.

Roe *versus* Gatehouse. Mich. 8 Will. III. B. R.

ASSUMPSIT; quod cum the Defendant was indebted to him
 in 51. for Money lent, and promised to pay; Cumq; etiam
 at the Request of the Defendant the Plaintiff found horse-meat
 for J. S. super se Assumpsit; and says not that the Defendant super
 se Assumpsit. A Verdict being for the Plaintiff and entire Da-
 mages, and a Writ of Error brought in B. R. relying upon 3 Cro.
 913. and Noy. 50. for J. S. might as well be the Person promi-
 sing as the Defendant; and the Promise is the Gift of the Action;
 and an Uncertainty in that cannot be cured by Intendment after
 Verdict. Sed per Cur. It being said positively at first, That the
 Defendant super se Assumpsit, and then cumq; etiam, &c. the
 same Promissio shall go to all the Promises; and by Reason of
 the *Etiam* Etiam, it cannot be intended of a Promise by J. S. for
 he had not promised before. Judgment affirmed. Vide Sid. 292,
 306. Lutw. 125. 3 Co. 702.

(4)
 Incestuosity
 in Court cu-
 red by Ver-
 dict.
 Vide: Lutw:
 899.
 1 Saund. 154,
 155.
 2 Saund. 171.

Prince *versus* Mok. Pasch. 9 Will. III. B. R.

IN Case the Plaintiff declared, Quod cum quer' 3 Julii posses-
 sionat. fuisset de quodam clauso prati prædict. defend. 3 Au-
 gusti erexit novum molendinum & aquam currentem fecit inun-
 dare per quod inundavit clausum suum prædict. per quod totum
 usum & proficuum inde eodem secundo die Julii usque tempus ex-
 hibitionis billæ prædict. amisit: Verdict pro Quer. and entire Da-
 mages; but Judgment was arrested; for an Erection on the 3d
 Day of August, might make him lose a particular Gain or Pro-
 fit from the 2d Day of July, as if he had laid in the Meadow
 for Hay. But by an Erection on the 3d Day of August he could
 never lose totum usum & proficuum from the 2d Day of July;
 therefore he has recovered more Damages than he ought, and
 this Case is not to be distinguished from Moor 887. Hob. 189.

(5)
 Judgment ar-
 rested be-
 cause more
 Damages re-
 cover'd than
 ought.
 Vid. 1 Saund.
 154, 155.
 2 Saund. 171.

(6) *East versus Ellington.* Mich. 1 Ann. B. R. Vide *this Case, Title Bills of Exchange.* Vol. 1. Pag. 130. pl. 14.

Crowther versus Oldfield. Hill. 4 Ann. B. R. Vide *this Case, Title Jeofails.* Vol. 1. Pag. 364. pl. 5.

WHERE a Verdict will not a Cicle defectively set forth, but not defective in itself.

Hadley versus Stiles. Mich. 9 Ann. B. R.

(8)
In Debt on
single Bill
and Nil de-
bet pleaded,
the Jury find
Nil debet
to Part and
Debet to the
rest, well af-
ter Verdict.
Vide 1 Mod.
292.
1 Show. 539.
3 Lev. 55.
2 Saund.
255, 308.

DEBT on a Bill penal for 200l. The Defendant pleaded Nil debet, and the Plaintiff took Issue thereon, and the Jury found Nil debet for 200l. and Debet as to 100l. 92. Lutwyche urged, That this Plea, Issue and Verdict were immate- rial, and that the Debt could not be apportioned. Et per Cur. The Plea was in, but the Verdict has made it good: Cile will intend 200l. paid, and an Acquittance under Seal produced in Proof thereof; and the Jury may as well apportion here as in Debt on a simple Contract, where they may find Nil debet for Part. Vide Mo. 957. & Rol. Rep. 257. M. 21. 22.

VIEW.

V I E W.

Vid. 1 Show.

3.
2 Lev. 117.Kempster *versus* Deacon. Pasch. 8 Will. III. C. B.

A View is grantable, but that is only where the Title is in Question. (1)

Anonymus. Trin. 10 Will. III. B. R.

It was ordered, That when in Order to a View, the last Juror is withdrawn, the Plaintiff shall take out a new Distringas, amoto the last Man of the Panel, to distrain the other twenty-three, with an apponias etiam decem tales. At the Trial of this Cause for Want of a full Jury upon the principal Panel, some Tales-Men were sworn and had the View, but the Distringas was returnable as an original Distringas, and so many of the principal Panel left out, who were not at the View, of which the Defendant complained, and would have set aside the Trial for Irregularity; but because no Venire appeared to the Court, and the Matter stood upon Record as an original Trial, and the Want of a Venire was helped by Verdict; and because the Cause was tried by those that were fittest, viz. those who had the View, the Court would do nothing in it, but ordered the other Course for the future. (2) Method of proceeding in Case of a View.

Anonymus. Mich. 4 Ann. B. R.

PER Holt C. J. Before we make a Rule for a View, the Venire facias must be returned, and then we may make a Rule, that so many of the Panel shall view the Premises. (3)

Villeins

Villeins and Villenage.

Smith *versus* Browne and Cooper.

(1)
(1)
Indebitatus
Assumpsit for
a Negro sold.
Q Whether
Inheritances,
or not?

THE Plaintiff declared in an Indebitatus Assumpsit for 20l. for a Negro sold by the Plaintiff to the Defendant, viz. in Parochia beatae Mariae de Arcubus in Warda de Cheape, and Ceteris for the Plaintiff; and on Motion in Arrest of Judgment Holt C. J. held, That as soon as a Negro comes into England, he becomes free: One may be a Villain in England, but not a Slave. Et per Powell J. In a Villain the Owner has a Property, but it is as an Inheritance; in a Slave he has a Property, but 'tis a Chattel real; the Law took no Notice of a Negro. Holt C. J. You should have averred in the Declaration, that the Sale was in Virginia, and by the Laws of that Country. Negroes are saleable; for the Laws of England do not extend to Virginia, being a conquered Country, their Law is what the King pleases; and we cannot take Notice of it but as set forth; therefore he directed the Plaintiff should amend, and the Declaration should be made, That the Defendant was indebted to the Plaintiff for a Negro sold here at London, but that the said Negro at the Time of Sale was in Virginia, and that Negroes by the Laws and Statutes of Virginia, are saleable as Chattels. Then the Attorney-General coming in, said, they were Inheritances, and transferrable by Deed, and not without: And nothing was done.

Vide 5 Mod.
186, 187.
2 Lev. 301.
3 Lev. 336.

(2)
Trove lies
not for a Ne-
gro; but in
Trespas
quare cap-
tum sum
cepit, Plain-
tiff may give
in Evidence
that he was
his Negro.

Smith *versus* Gould. Mich. 4 Ann. B. R.

TROVER for several Things, and among the rest de uno Athiope vocat. a Negro, and on Not-guilty pleaded Ceteris was for the Plaintiff and several Damages; and as to the Negro 30l. And it was moved in Arrest of Judgment, that Trover lay not for a Negro, for that the Owner had not an absolute Property in him; he could not kill him as he could in Dr. Contra, It was said Property implies the Right of having and enjoying, and disposing; but it does not always imply a Power to destroy; That this Power holds in Beasts, Fowl and Fish,

fith, which were made the Property of Mankind by the Act of God, and have a natural Existence, but not in Things incorporeal, which consist in jure tantum; for this being a Property ex Instituto only, the Owner has only a Power according to the Measure of this instituted Right: And it was instanced in the Case of a Common, a Way and a Ward. On a Ca. Sa. the Plaintiff has an Interest in the Body of the Prisoner as a Pledge, not to sell, but to keep, and it goes to Executors. Hob. 61. In a Servant to work him; in a Captive to sell him. Reg. 102. F. N. Br. 88. a. B. N. C. 295. Bro. Property 38. 1 H. 6. c. 5. in Rast. 219. Cott. Ab. 460. That the *Utit de Natio* habendo must lay the Explees of a Villein in working and taring him at Will. Co. Ent. 406. That by the Law of Moses a Man may be a Slave, and a Slave was a Chattel, his Master's Money, Exod. 20. 21. That by the same Reason there may be a *Servus predialis*, i. e. a Villein. One may be a *Servus personalis*, and that first a Captive and afterwards a Villein. Hob. 97. Brownl. 78. A Villein in Groat is a Chattel, for he is of a perishable Nature, and cannot endure for ever. So is Fitzs. Discontinuance 16. Br. Villein 60. As Villeins are regardant to Land, it is a different Thing, and in that respect they are Inheritances, and so are the Charters. Every Villein is intended in Law regardant; the Utit in the Register therefore supposes him to be *nativum suum*, but before he was a Villein, he was a Captive, and then a Chattel. Lastly, It was insisted, That the Court ought to take Notice that they were Merchandise, and cited 2 Cro. 262. The Case of Monkeys, 2 Lev. 201. 3 Keb. 785. 1 Inst. 112. If I impellon my Negro, a Habeas Corpus will not lie to deliver him, for by Magna Charta he must be Liber homo. 2 Inst. 43. Sed curia contra, Men may be the Owners, and therefore cannot be the Subject of Property. Villenage arose from Captivity, and a Man may have *Trespals quare captivum suum cepit*, but cannot have *Trober de gallico suo*. And the Court seemed to think that in *Trespals quare captivum suum cepit*, the Plaintiff might give in Evidence that the Party was his Negro, and he bought him.

Difference between Property in Things having a natural Existence, and a civil Existence only. Vide ante p. 556, 6 77.

Servus predialis and *personalis*.

1 Lev. 149.
2 Lev. 197.
Cro. Car. 278.
Raym. 67.
417, 418.

V I S N E

Seaman *versus* Ling. Mich. 6 Will. III. B. R.

(1)
If the Defendant be a Barrister, he may have the Venue changed to Middlesex. In *Tripp v. Wilcocks*, an Attorney, was sued by Bill of Exchange, and the Action was laid in Suffolk; and upon Motion, the Venue was changed into Middlesex; and vide 2 Ventr. 47. As an Attorney being Plaintiff lay his Action in Middlesex, the Venue shall not be changed, otherwise if in London.

If the Defendant be a Barrister, he may have the Venue changed to Middlesex. In *Tripp v. Wilcocks*, an Attorney, was sued by Bill of Exchange, and the Action was laid in Suffolk; and upon Motion, the Venue was changed into Middlesex; and vide 2 Ventr. 47. As an Attorney being Plaintiff lay his Action in Middlesex, the Venue shall not be changed, otherwise if in London.

Anonymous. Pasch. 8 Will. III. B. R.

(2)
When Motion to change the Venue ought to be made.

PER Holt C. J. The Motion to change a Venue ought to be within eight Days after the Declaration delivered, but this Rule is not always strictly adhered to. In *Tripp v. Wilcocks*, B. R. It was said by Aldon, one might make to change the Venue at any Time before Judgment signed, which Holt C. J. says is contrary, heretofore it was never granted after the Rules for Pleading were out.

The Duke of Norfolk *versus* Alderton, Pasch. 9 Will. III. B. R.

(3)
Visne refus'd to be chang'd in an Action of Scandalum Magnatum. Vide 1 Lev. 56, 149. 3 Keb. 39.

A Motion was made to change a Visne in an Action of Scandalum Magnatum upon the common Affidavit, insisting on my Lord Shaftsbury's Case, 2 Jo. 192, 198. but it was denied; for in my Lord Shaftsbury's Case, it was on an Affidavit of the vast Interest he had in the City, and the Unlikelihood of an impartial Trial; but we will not deprive the Plaintiff of that Benefit the Law gives him, of laying his Action where he pleases, for the Convenience of the Defendant. Vide 1 Lev. 56.

Note, At Common Law, all Actions were laid in the proper County, that there might be a Jury de vicineto.

Ano-

Anonymus. Mich. 10 Will. III. B. R.

IN an Action on the Case against the Drawer of a Bill of Exchange who lived at Bristol, and drew the Bill there, a Motion was made to change the Venue, but it was denied, for the Person upon whom the Bill was drawn, lived in London, and there was the Refusal, and that must be proved to make the first Drawer liable; for where Evidence necessary to support the Action arises in two Counties, the Plaintiff may chuse which he will; and this is the Ground of the Rule, That if the Plaintiff will be bound to give some material Evidence in the County where the Action is laid, the Court will never change the Venue. Et Pasch. 10. W. 3. B. R. In Crober and Conberston the Defendant had Leave to change the Venue, and the Plaintiff moved to set that aside, offering to be bound to give Evidence in the County where the Action was laid: Upon Enquiry the Court found the Plaintiff was Assignee of Commissioners of Bankrupts, and could prove the Assignment in that County: Per Holt C. J. The whole is transitory. Et per Cur'. The Conberston is the Cause of Action; and not the Assignment; and you are in Place of the Commissioners, and the Venue was according to the Rule. And Pasch. 12 W. 3. B. R. it was held, That where a Rule is made to change a Venue, and afterwards the Plaintiff would bring it back again, the Rule must be, dare aliquam evidentiā de materia in exitu, in the County where the Action was brought.

(4)
Where Evidence necessary to support the Action arises in two Counties, the Plaintiff may lay it in either.
Vide infra.
7 Co. 2, 3,
& 7. b.
Raym. 33.
1 Lev. 178,
207, 394.

Dominus Rex versus *The Mayor of Oxford*. Pasch. 13 Will. III. B. R.

IN Case for a false Return, the Action was laid in Suffolk, and the Defendant moved it might be laid in Middlesex; and gave as one Reason, That it would raise Heats in the County. The Court inclined to do so, but the Plaintiff insisted and would not consent, and therefore nothing was done; because he had a Right to lay it in either County.

(5)
Vide supra.
Raym. 33.
Lew. 345.
5 Co. 2, 3, 4,
& 7. b.

Crockett's Case. Trim. 3 Ann. B. R.

S. C. 6 Mod.
175.

THE Plaintiff declared of a promise in Staffordshire, and the Declaration was delivered in Easter-Term: Chertam moved to change the Venue. Et per Holt C. J. (The Motion being in Trinity-Term) Unless it appears upon the face of the Declaration, That the Plaintiff was not entitled to a Plea to enter,

enter, we expect an Affidavit when the Declaration was delivered, that thereby the Court may be ascertained.

Sir Samuel Gerrard's Case. Mich. 3 Ann. B. R.

(7)
Vid. 1 Saund.
229.
Raym. 33.

AN Action of false Imprisonment against the Sheriffs of London was laid in Middlesex, and upon the common Affidavit a Rule was made that the Venue should be changed to London; but then it was said that the Officer of the Counter was subject to the Sheriffs, and so there could be no good Trial, for which Reason it was removed back to Middlesex.

Heathcoat's Case. Pasch. 4 Ann. B. R.

(8)
Venue not
changed in
Action a-
gainst a Ligh-
terman, &c.
for Goods
lost.

AN Action against a Lighterman for not delivering Goods, was laid in London, where they were to be carried. It was moved to change the Venue, because the Damage and Neglect was in Kent; sed non allocatur; for the Neglect is transitory, and not material where it was, and the Court will never change a Venue for a Carrier, which is the same Case; otherwise perhaps in Deceit, or where there is an actual Mistake. Sed per Holt C. J. Mich. 10 W. 3. B. R. fuit dit. That in an Action of Escape, it is not the Course to change the Venue.

Knight versus Farnaby & al. Pasch. 5 Ann. B. R.

(9)
Clerk of Af-
fize may lay
his Action in
Middlesex
and the Ve-
nue shall not
be chang'd.

Practice of
changing the
Venue in tran-
sitory Actions
began in King
James the
First's Time.

MR. Knight, Clerk of Assize of the Norfolk Circuit, brought an Action of Assault and Battery against Farnaby and others, for a Battery committed in Kent, and laid the Action in Middlesex: Upon the common Affidavit the Visne was changed, and upon the Motion of Mr. Knight, that Rule was set aside, and the Visne brought back again. Et per Holt C. J. In Strictness of Law, an Action for a transitory Battery, as Battery is, may be laid any where. If by Law the Place were material, the Defendant might give in Evidence, as he does, in criminal Prosecutions, that the Battery was done in another County: However it is now allowed and become the Course of the Court to change the Venue for the Defendant upon the common Affidavit; a Practice which, as he had heard by old Practisers, came up first in King James the First's Time; but that Rule had never obtained in Cases of privileged Persons, as Barristers, &c. who are to attend at Westminster; and therefore have the Liberty of laying their Actions in Middlesex: So it was held in the Case of Mr. Thompson against Scroggs. The Plaintiff is an Offi-
cer,

cer, he is bound to attend the Assizes at Norfolk, and to attend at Westminster to return the Postea's. By the Statute of Westminster Justiciarii habeant Clericos suos irrotulantes; and in Dyer, upon a Question who should return the Postea's in Case both the Justices of Assize died before the Day in Bank, 'twas held the Clerk of Assize should return them. Therefore he is Clerk to the Judge of Assize, and a Minister here above to attend upon Trials ordered by Superior Courts upon Writs of Nisi Prius issuing out of those Courts. Et per Powell J. The Privilege extends to Judges Clerks, as well as to Serjeants at Law, Barristers, and Attorneys, for they are bound to be in Middlesex to attend their Masters, and so is the Clerk of Assize; that the Clerk of Assize was the Clerk of the Judge of Assize; and since the Statute has allowed the Judge of Assize to have a Clerk, they shall not be obliged to return the Postea's themselves, but the Clerk of Assize shall attend at Westminster to return them.

Clerks of Assize are by Stat. Westm.

Universities and Schools, &c.

Hinton *versus* Hern. Mich. 8 Will. III. B. R.

Vide ante 450.

HINTON was libelled against in the University-Court of Oxford, reciting the Statute of E. 6. and Car. 2. And the Custom of the University to have but four Taverns, and that he sold Wine without their Licence in Contempt of the Laws of the University and the said Statutes; and because a Penalty is inflicted by the said Statutes, and they cannot hold Plea for such Penalty, a Prohibition was granted.

(1)
Vice Chancellor's Court cannot hold Plea for a Penalty of a Statute.

Matthews

S. C. ante
412, 453.

(1)
Argued whether a Prohibition lay to the Ecclesiastical Court in a Suit for teaching School without Licence from the Ordinary before the Act for preventing the Growth of Schism.
Quære.

Matthews *versus* Burdett. Hill. 1 Ann. B. R.

IN a Prohibition the Plaintiff declared, That whereas by the Common Law it was lawful to teach others, and instruct them in any honest Art or Science, and that teaching est res more laici, &c. Yet that he was sued in the Spiritual Court for teaching Children in the Elements of Grammar, without Licence from the Ordinary: On Demurrer it was insisted for the Plaintiff;

1st, That the Law favours Means of Livelihood; that Grammar was equally useful to all literate Professions, and that a Lawyer or Physician could be no more without it than a Divine. That all the Colleges in the University were lay Corporations; that tho' the Members of the College might be all of them Spiritual Persons, yet the Corporation was Lay and Temporal; because the Institution and End was Temporal, viz. to advance Learning, which shews that a School-master is a Lay-Employment, and was formerly under the Care of the Civil Magistrate: Stillingsfleet's Orig. Britt. 210, 212, 213. That the Common Law takes no Notice of it but as Temporal. Vide 11 H. 4. 47. Poph. 170. Reg. 35. And that the only Mention of it before the Reformation, is Anno Domini 1408. Per Lyndewode 282. That School-masters permit not their Scholars to dispute of Religion, under Penalty of being censured for Heresy, to which every Body was liable; which Provision was to prevent the Spreading of Wickliffe's Doctrine: That no Law or Canon required a Licence till the Council of Lateran, Anno Domini 1215. Decret. 6. Tit. 5. cap. 1, 2, 3. and that is, That there shall be a School-master in every Cathedral, and that he shall be licensed by the Bishop. That the several Acts of Parliament which require the School-master's taking a Licence from the Bishop, shew it was not necessary before, nor was there any such Usage or Practice that can be made apparent. Vide Stat. 23 Eliz. c. 2. s. Jac. 1. c. 4. 14. Car. 2. c. 4.

2dly, That if this was a Calling which a Lay-Man might follow by the Common Law, a Canon cannot restrain him of the Liberty the Law gives him; the Common Law and Custom of the Realm cannot be altered or abrogated, but by Act of Parliament, and therefore a Canon cannot do it, tho' confirmed by the King's Royal Licence, or afterwards confirmed by his Royal Authority. Vide 12 Co. 72. 2 Inst. 97. 647, 653, 657. 2 Ro. Ab. 454. Mo. 782. Ratio est, because being a Lay-Man, he is not represented, and therefore his Consent is not given, and a Man cannot be under the Obligation of a Canon without his Consent express or implied. In the Primitive Church the Laity were present

sent at all Synods. When the Emperor became Christian, and Canon was then attempted without the Consent of the Clergy, and his Concurrence included the Assent of the whole People; because he had the sole legislative Power in him: But this is not the Case of our King; for he has not the whole legislative Power in him: Ergo, his Consent to a Canon in re Ecclesiastica, makes it a Law to bind the Clergy, but not to bind the Laity. Vide 20 H. 6. 13. Br. Ordinary 1. 2 Ro. Ab. 226. 2 Cro. 670. 2 Brownl. 38. Cro. Car. 588. Palm. 379.

3dly, Where the Common Law or a Statute gives a Remedy in foro seculari, whether the Matter be Temporal or Spiritual, the Cognizance of that Matter belongs to the King's Temporal Courts only, unless the Jurisdiction of the Spiritual Court be saved by that Statute which gives the Penalty; for otherwise one might be twice punished for the same Thing. Vide Litt. Sect. 136, 137. Cro. Car. 229. 1 Mod. 21, 22. 1 Jon. 320. Where a Crime which was punishable in the Ecclesiastical Court, is made felony, their Jurisdiction is gone. For Note. The Nature of the Crime is altered. So 2 Leon. 53. 4 Leon. 92. That in this Case the Act of Parliament which gives a temporal Penalty, does not take the Jurisdiction of the Spiritual Court, which was urged as an Argument that the Parliament did not look upon it as an Ecclesiastical Matter; for in all Cases where Acts of Parliament have imposed further Penalties in Ecclesiastical Offences, there is a Saving, when for the Jurisdiction of the Ecclesiastical Court; so is 12 Eliz. cap. 5. Of Whorey. 21 Eliz. c. 6. Of Simony. 4 Jac. 1. Of Drunkenness. 3 Car. 1. c. 1. Of the Observation of the Sabbath. 3 Jac. 1. c. 4. Of Recusancy. And they urged also that these Parliaments had not added these Savings, if they had been such; but it was their Opinion, That imposing a Penalty made it a temporal Offence, and that their Jurisdiction would have been lost without such a Saving. And lastly this Difference was taken, That where an Act of Parliament gives a Remedy for a Spiritual Matter in the Temporal Courts, the Spiritual Jurisdiction is gone; but where an Act gives a Remedy for a Temporal Matter to be prosecuted in the Spiritual Court, yet the Remedy at Common Law remains, ac pro violenta infectione manuum in Clericum. Note. In the Statute de circumspice Agas, the Words are, commissum sunt alias, which must be understood of a Jurisdiction before granted to them.

On the other Side it was said, That the Canon of Lateran before mentioned, was received in England as well as the other Canon of the same Council in Parochial Cities; and that it appears by Custom, that the Bishop is to superintend the Education of Youth. Vide Lyndew. l. 5. tit. De Magistris, and the General Statutes, requiring that he shall have a Licence from the Ordinary; And it was said, That the Toleration Act did not influence

hence this Case, for that did not exempt Men in Places of Trust from qualifying themselves according to the Rites of the Church of England.

Vide 3 Co.

64, 65.

5 Co. 119.

2 Lev. 184.

243.

Void and Voidable.

Hall versus Biggs. Trin. 2 W. & M. B. R.

(1)
Where an
Order of Ju-
stices is not
void but
voidable.

IN Debt on a Bond, with Condition to stand to and perform the Order of the Justices, the Defendant pleaded they made no Oyer; the Plaintiff replied and set forth the Oyer. The Defendant demurred, pretending it was a void Oyer, and that he was not bound to perform it, comparing it to the Case of an Award, but the Court did not think them alike; for the Oyer being a judicial Act is not absolutely void, but voidable, and continues an Oyer till avoided.

Prigg versus Adams & al. Mich. 4 W. & M. B. R.

(2)
Judgment of
a superior
Court is only
voidable.
Vide 2 Lev.
184 & 243.
3 Lev. 23.

IN Trespas and false Imprisonment, the Defendant justified as an Officer under a Ca. Sa. on a Judgment in the Court of Common Pleas upon a Verdict for 5 s. for a Cause of Action arising in Bristol. The Plaintiff replied, and set forth the private Act of Parliament for erecting the Court of Conscience in Bristol, wherein was a Clause, That if any Person bring such Action in any of the Courts at Westminster, and it appeared upon Trial to be under 40 s. that no Judgment shall be entered for the Plaintiff; and if it be entered, that it shall be void: Upon Demurrer the Question was, Whether the Judgment was so far void, that the Party should take Advantage of it in this collateral Action? And the Court held that it was not; but that it was only voidable by Plea of Error; as where one is taken on Outlawry and hath no Addition; (Vide 7 H. 5. c. 5. 8 H. 6. c. 10. Bend. 12, 88, 122, 132. 1 Inst. 259. Dy. 214. 5 Co. 119.) and said it was not like the Case of a Judgment vacated. 2 Sid. 225.

Thompson *versus* Leach. Hill. 9 Will. III. B. R. S. C. ante 427, 465, 476.

BOND of an Infant or Non compos is void, because the Law has appointed no Act to be done to avoid them; and the only Reason why the Party cannot plead Non est factum, is, because the Cause of Nullity is extrinsic, and does not appear on the Face of the Deed. (3) Bond of an Infant, or Non Compos, is void.

Uses and Trusts.

Vide ante 590. Lutw. 824. Vaug. 50.

Davies *versus* Speed. Hill. 3 W. & M. B. R. Rot. 261. S. C. 4 Mod. 153.

HUSBAND seized in Right of his Wife: Husband and Wife covenant to levy a Fine to the Use of the Heirs of the Body of the Husband on the Wife begotten, Remainder to the Husband in Fee. They have Issue, the Wife dies, the Issue dies, and the Husband dies; and now the Question in Ejectment was, Whether the Heir of the Husband, or the Heir of the Wife should have the Lands? *Ex per Cur.* Parliament Cases, 104. (1) Husband and Wife covenant to levy a Fine of the Wife's Land to the Use of the Heirs of the Body of the Husband on the Wife begotten, the Limitation is void. Q. 5 Mod. 153.

1st, Here can be no Estate for Life to the Husband by Implication; because the Estate was the Wife's, to which he is a Stranger.

2dly, This Limitation to the Heirs of the Body of the Husband, &c. was merely void; for taking it as a Remainder, there is no precedent Estate of Freehold to support it; and taking it as a springing Use, then it is a springing executory Use, to arise after a dying without Issue, which the Law will not expect; so that 'tis either Way void, and yet must be one of them: But in this Case the Chief Justice held, That a Frodment to the Use of A. and his Heirs, to commence four Years from thence, was good as a springing Use, and that the whole Estate remained in the Feoffor in the mean Time; so it is if it were to commence Vol. II. 9 m after

after the Death of A. without Issue, if he die without Issue within twenty Years.

Ld. Anglesey versus Ld. Altham. Pasch. 8 Will. III. B. R.

(2) Fine levied and Common Recovery suffered, wherein Conusee was Tenant, and no Uses of the Fine declared. Intended to be to the Use of the Conusee, in order to make a Tenant of the Freehold. Vide infra & prox. pag. Luw. 273.

UPON the Trial of this Cause at Nisi Prius in Middlesex, before Holt C. J. a Case was made for the Opinion of the Court, viz. H. levied a Fine, and afterwards suffered a Common Recovery, wherein the Conusee was Tenant, and there being no Deed in the Case, it was objected, That the Use of the Fine resulted to the Conusor; and tho' the Intent of the Fine might be to make a Tenant to the Præcipe, yet no Use or Trust can be averred since 29 Car. 2. c. 3. Sed non allocatur; for at Common Law the Use was always intended to be to the Feoffee or Conusee, and in pleading, never was averred. Co. Ent. 114. 273. Plowd. 477. But if it be to the Use of the Feoffee or Conusor, then it must be averred.

2dly, The Court held the Party was in by the Fine immediately, and so there was a good Tenant to the Præcipe.

3dly, The Statute extends not to Uses by Operation of Law, but to such Uses as are to a third Person, and that neither the Conusor nor the Conusee could aver the Fine to the Use of a third Person since the Statute.

Tregame versus Fletcher. Hill. 8 Will. III. B. R.

(3) Where the Uses of a Recovery are declared by a Deed subsequent, the Pleading should be general, that the Recovery was to such Uses. Vide prox. pag. Where Uses may be averr'd by Parol, and where not. Vide 1 Salk. 75. 2 Co. 77. Luw. 273.

ERROR of a Judgment in the Grand Sessions of Wales, in Replevin, where the Defendant made Conusance, That A. was seised in Fee-tail, and suffered a Common Recovery; and that by Deed made at a Time subsequent. 'twas agreed the Recovery should be to the Use of B. for the Security of a Rent-Charge, and that Rent was Arrear, for which he distrain'd. Judgment was for the Abowant. Holt C. J. held, 1st, That it was not well to plead the Uses were declared by a subsequent Deed; but he should plead, Quod recuperatio habita fuit, &c. quæ quidem recuperatio in forma prædict. habita fuit, to such and such Uses.

2dly, he held, That where the Uses of a Recovery are declared by Deed precedent, no new or other Use can be averred by Parol, unless there was some Variance between the Deed and the Recovery; and that in Case of a Deed precedent, if the Party set up other Uses, he must confess and avow: But where they are by Deed subsequent, new or other Uses may be averred without shewing the Deed, tho' there be no Variance, &c. because there was an intermediate Time when there might be such Agreement made, and the Uses arise by the Recovery according

to that Agreement; and if a Deed subsequent be set up, the other may traverse those Uses. Adjournatur.

Jones *versus* Morley. Hill. 9 Will. III. B. R.

UPON a Special Verdict in Ejectment it was found, That Bowyer being seised in Fee, in Consideration of Marriage, by Indenture of Lease and Release conveyed to A. and B. to the Use of her self in Fee, till the intended Marriage with Edward Morley should take Effect, and until the said Morley should settle upon her a Jointure of 300 l. per Annum, and then to the said Morley and his Heirs: The Marriage took Effect, and on the 29th Day of January 1665, they covenanted and agreed to levy a Fine next Hillary-Term; and the Use thereof was declared by the same Deed to be to E. Morley and his Heirs. Afterwards, viz. the 31st Day of the same Month, by Indenture between the Husband and Wife, it was agreed and declared, That the Uses of the Deed of the 29th should be revoked. After this, the same Hillary-Term, a Fine was levied; and this Writing of the 31st being no Deed, it was resolved,

(1)
Where a Conveyance to uses enures by Way of Transmutation of Possession, the Uses may be declared or revoked without Deed.
Vide 2 Lev. 77.
1 Co. Rector of Chedington.

1st, That by the Agreement of the 29th, the Parties meant a Fine to be levied Hillary-Term come twelve Months, and not the Hillary-Term then current, and therefore this Fine was not pursuant to that Covenant.

2dly, That if the Fine had been levied pursuant to that Covenant, no parol Averment could have been allowed to declare other Uses, or that the Fine was not to the Uses of that Deed, and all Parties had been estopped to aver the contrary by Parol; but by Deed subsequent, and before the Fine, other Uses may be averred.

3dly, That since the Fine is not according to the Deed, other Uses may be averred, tho' they were declared by Writing, and not by Deed; for by the Variance there is Room and Occasion given to enquire and receive Information, that the old Agreement was relinquished; and by the same Reason the Use of a Fine may be declared by Parol upon an original Agreement, it may now, as in this Case, where the original Agreement was relinquished: Yet without such Averment the Fine shall be intended to the Use of the first Agreement, notwithstanding the Variance.

4thly, That this is a good Revocation of the Uses of the first Deed, tho' it be but a Writing; for where the Conveyance enures by Way of Transmutation, the Use is according to the Intent of the Party, and 'tis no Matter how that Intent is manifested, so as it may be known; but where the Conveyance is by Way of Covenant to stand seised, there must be a valuable Consideration, or a binding Agreement by Deed.

S. C. Farell.
71.
Vide post pl.
7.

(3)
If a Lease and
Release be
pleaded to A.
and his Heirs,
and no Consi-
deration ap-
pears, nor
said to whose
Use it was, it
shall be in-
tended to be
to the Use of
the Releasee
and his Heirs.

Shorridge *versus* Lamplugh. Mich. 1 Ann. B. R.

H Brought Covenant as Assignee of a Reversion, and shew-
ed, That the Lessor in Consideration of 5 l. bargained and
sold to him for a Year, and afterwards released to him and his
Heirs, *virtute quarundam Indentur' bargainie venditionis & relaxa-*
tionis necnon vigore Statuti de usibus, &c. he was seised in Fee:
And it was objected, That the Use must be intended to be to the
Releasee and his Heirs, because no Consideration of the Release
nor express Use appeared by the Pleading; so that without consi-
dering the Operation of the Conveyance, the Question was upon
the Pleading, Whether the Use shall be intended to the Releasee,
unless it be averred to be to the Releasee? Et per Holt C. J.
to which the rest agreed.

This Way of Pleading was certainly good before the Statute
27 H. 8. so is Plowd. 478. and many Precedents in Co. Ent. of
Feoffments averr'd in the same Manner; for the Use was a Matter
that was extrinsecal to the Deed, and depended upon collateral
Agreements at Common Law, and then the Use might, as since
the Statute of Frauds by Writing, be averred by Parol, and
therefore in pleading the Conveyance was taken to the Use of
him to whom the Conveyance was made, till the contrary ap-
peared; if it were otherwise, it ought to come on the other
Side; and 27 H. 8. has not altered the Course of Pleading,
which is rather confirmed by the Statute; because, if now the
Use be construed to be to the Releasee or Feoffor, the Convey-
ance will be to no manner of Purpose, it being still the old Estate
to which the old Warranty and other Qualities remain annexed,
whereas before the Statute there might be some End in making
the Feoffment, viz. to put the Freehold out of him and prevent
Wardship; and Co. Litt. goes no farther, than where there is a
Feoffment to particular Uses and Estates, the Residue of the
Use shall be to the Feoffor, which is reasonable; for the raising
those particular Estates appears a sufficient Reason for the Con-
veyance. And Powell J. doubted, Whether there could be a re-
sulting Use on a Lease and Release, unless where particular Uses
are limited; for this Way of Conveyance is grounded on the an-
cient Way of Releasing at Common Law, wherein there was a
Merger of Estate, which is a good Consideration, as where the
Lessor conveys to the Lessee and his Heirs. In Error of a Judg-
ment of C. B. which was affirmed.

Q Whether
there can be
a resulting
Use upon a
Conveyance
by Lease and
Release?
Vide. 1 Lev.
30.
2 Lev. 77.

Broughton

Broughton *versus* Langley. Hill. 1 Ann. B. R.

Vide 1 Chan.
R. 176.
Lutw. 823.

ON A seised of Lands in Fee, devised them to Trustees and their Heirs, to the Uses, Intents and Purposes herein after mentioned, viz. To the Intent and Purpose to permit A. to receive the Rents and Profits for his Life, and after that the Trustees should stand seised of the Premises to the Use of the Heirs of the Body of A. with a proviso, that A. with the Consent of his Trustees, might make a Jointure for his Wife; and the Question was, Whether A. had an Estate-tail executed, or not? And it was adjudged he had. Holt C. J. pronounced the Judgment of the Court, and gave these Reasons: 1st, That this would have been a plain Trust at Common Law, and what at Common Law was a Trust of a Freehold or Inheritance is executed by the Statute, which mentions the Word Trust as well as Use; and the Case in 2 Vent. 312. Burchet and Durdant, is not Law; and that the Change of Expression in the principal Case by using the Word permit in the first Clause, which are Words of Trust; and afterwards making mention of a Use, is immaterial, in regard Trusts at Common Law and Uses are equally executed by the Statute.

2dly, 'Twas held, That a Power to make a Jointure, does not necessarily exclude an Estate in Tail, or an Intent to give it; because Tenant in Tail, without discontinuing or barring the Tail, cannot make a Jointure, and so this Power has its Use.

(6)
Devise to Trustees and their Heirs, on Trust, to permit A. to take the Profits for his Life, and afterwards to stand seised to the Use of the Heirs of A's Body, is a Use in A. and he has a Tail.

Whatever was or would have been a Trust at Common Law, is since the Statute a Use executed.

Adams *versus* Tertenants of Savage. Hill. 1 Ann. B. R.

S. C. 1 Salk.
40. & ante
601 & 678.

IN a Scire facias, on a Judgment against Tertenants, it was found by Special Verdict, That one Savage being seised in Fee, conveyed by Lease and Release to Trustees and their Heirs, to the Use of himself for 99 Years, Remainder to the Use of the Trustees for twenty-five Years, Remainder to the Heirs male of his own Body, Remainder to his own right Heirs; the Question was, Whether Savage was Tenant in Tail, or only Tenant for Years? And the Court held the Limitation to the Heirs male of the Body to be void, because there was no preceding Estate of Freehold limited to support it; and it shall not be implied contrary to the Intent of the Conveyance; and if it could be implied, it must be out of the Estate given to the Heirs of the Body, which cannot be, because this is a new Use; where as a resulting Use is always from the old Estate, and parcel of the old Use; and here the Estate takes Effect by Transmutation of Possession out of the Seisin of the Trustees; and not like Fenwick

(7)
Lease and Release by A. to Trustees and their Heirs to the Use of A. for 99 Years, Remainder to the Use of the Trustees for 25 Years, Remainder to the Heirs male of A's Body: Remainder to the Heirs male is void, for want of a Freehold
1 Chan. Rep. 339.

wick and Milford's Case, where the Owner covenanted to stand seised to the Heirs of his Body: And yet per Powell J. Even in that Case, if there had been an express Estate limited to the Co. benantor, it had been otherwise.

Pye versus George. Mich. 9 Ann. In Canc'.

(8)
Trustees join
to bar a con-
tingent Re-
mainder, it is
a Breach of
Trust.
Cro. Car. 313.
1 Chan. Rep.
28, 296.

TRUSTEES appointed to preserve contingent Remainders did join in a Conveyance to destroy the Remainder before a Son was born, and this was decreed a plain Breach of Trust, and that whoever claimed under this Conveyance, having Notice of the Trust, or by a voluntary Settlement, should be liable to make good the Estates. Per Harcourt, Lord Keeper.

Cro. Jac. 104,
509.
Cro. Car. 283,
253.
1 Leo. 54.
1 Hawk. cap.
68 & 82.

Usury and Extortion.

Domina Regina versus Smith. Pasch. 4 Ann. B. R.

(1)
Justices of
Peace have
not Jurisdic-
tion upon
the Statute of
Usury.

INDICTMENT was at the Sessions before the Justices of the Peace at Hicks's-Hall for Usury, contra formam Statuti, and Judgment was against the Defendant, upon which a Writ of Error was brought in B. R. and the Judgment reversed; for the Justices of the Peace have no Jurisdiction in this Case.

Domina Regina versus Baynes. Pasch. 5 Ann. B. R.

(2)
Charge of Ex-
tortion ought
to be parti-
cular, and lay
the Defen-
dant took it,
extorsive.

UPON a Certiorari this Order was removed, Whereas by Complaint in Writing at this Sessions, exhibited to this Court against R. B. Clerk of the Peace. R. B. was charged with divers Misdemeanors in his Office, viz. That he exacted of one A. the Sum of 8 s. for a Subpoena, and did compel one B. to pay him 9 s. more than his due Fee: and it doth appear upon Evidence, That the said R. B. mis demeaned himself in his Office

by extorting of the said A. by Colour thereof 5 s. more than was due, and of the said B. 9 s. more than was due; this Court doth discharge and remove him from the said Office of Clerk of the Peace.

Note, By 1 W. & M. Sess. 1. cap. 21. sect. 4. If any Clerk of the Peace do misdemean himself in his Office, and thereupon a Complaint and Charge in Writing of such Misdemeanors be exhibited against him to the Sessions, the Sessions shall discharge him. It was agreed by all, That if here was not a Charge of Extortion against R. B. then he was not removed; for the Justices have only a Special Authority to execute as the Statute appoints, and the Act shall be construed strictly, because it deprives the Defendant of the Benefit he has by Magna Charta, of being tried per Pares. The Justices of the Queen's Bench being divided, it was adjourned into the Exchequer Chamber, where Gould and Powys Justices, Smith Baron, Ward C. B. and Trevor Chief Justice of the Common Pleas, held this a good Charge of Extortion, by Reason of the Viz. which particularizes the general Charge, and incorporates what follows after it with what went before it. Cited 2 Brownl. 151. 1 Vent. 37. West's Peced. 97, 130. 1 Sid. 91. 1 Keb. 357. Holt C. J. Powell and five more Justices contra. Before the Viz. all was mere Recital and also general, and no general Charge is by Law allowable in any Case but Barretry, which in its Nature must consist of a Heap and Multitude of Particulars; but that in this Case it ought to be certain and positive; because he is charged with a Misdemeanor, and ought to know what he is to answer to; he is not only to be fined, but to lose his Freehold; and where a Man is to lose any Part of his Property, he must have a certain Charge against him; the Act requires the Cause of Removal should be in Writing, that the Cause may appear, and that he may have the Benefit of Appeal; and these Articles are in the Nature of Informations; That what went before the Videlicet being only Matter of Recital, and a kind of Title to the Articles, the Charge begins at the Videlicet, and then it does not appear that these Misdemeanors relate to his Office: It is not said that he took those Sums extorsive & colore officii, and a Man cannot be charged for Extortion without charging him with acting extorsive, which are Words as necessary as Proditorie & Felonice. In this Case non constat but 8 s. was his Fee. The Charge should have been, either that 3 s. was his Fee; and that he, colore officii sui extorsive took 8 s. or generally, That he colore officii sui injuriolse & extorsive took 8 s. pro feodo, &c.

Lastly, They held, That what followed upon Evidence before the Justices, does not help; because 'tis no Part of the Charge: And the Order was quashed. Note, This Report is only of the Effect of what was said in B. R.

Note, The Stat. of Usury is not pleadable to a Bottomry-Bill or Bond, &c. 1 Lev. 54. 2 Lev. 7. 1 Show. 8.

In Convictions, what appears upon Evidence will not supply the Defects of the Charge.

Wager

1 Leon. Caf.
340.
2 Leon. Caf.
143.
Cro. El 790.
3 Leon. Caf.
55.
2 Infl. 45.

Wager of Law.

Anonymus. Trin. II Will. III. B. R.

(1)
Method of
performing
Wager of
Law.

Bro. Non-
suit 1.

ACTION of Debt was brought on a By-Law; the Defendant waged his Law, and a Day was given upon the Roll for him to come and make his Law; and now upon the last Day of the Term he came: And Northey for the Plaintiff insisted, That if he swear falsely or rashly, and without Reason, the Court is not bound to receive him to it, and prayed a Day to speak to that Point. Sed per Holt C. J. We can admonish him; but if he will stand by his Law, we cannot hinder it, seeing it is a Method the Law allows; and the Defendant was set at the right Corner of the Bar, without the Bar, and the Secondary asked him, If he was ready to wage his Law? he answered, Yes; then he laid his hand upon the Book, and then the Plaintiff was called; and a Question thereupon arose, Whether the Plaintiff was demandable? And a Diversity taken where he perfects his Law instant, and where a Day is given in the same Term, and when in another Term: As to the last, they held he was demandable, whether the Day given was in the same Term or another: Then the Court admonished him and also his Compurgators, which they regarded not so much as to desist from it; accordingly the Defendant was sworn, That he owed not the Honey modo & forma, as the Plaintiff had declared, nor any Penny thereof. Then his Compurgators standing behind him, were called over, and each held up his right hand, and then laid their hands upon the Book, and swore, That they believed what the Defendant swore was true. Per Northey, This will be a Reason for extending Indebitatus Assumpsit further than before. Holt C. J. We will carry them no farther.

Note, This seems to be the Case mentioned Pl. 2. to have happened in B. R. about two Years before, and not to be Law.

Mood versus The Mayor of London. 2 Martii, 1701.
At Guildhall-Chamber.

S. C. 1 Salk.
397.
Vide 2 Lev.
106.

In Debt for the Penalty of a By-Law the Defendant waged his Law, and it was over-ruled in the Court of the Lord Mayor, and a Commission of Error sued out before Holt C. J. Ward Chief Baron, and other Commissioners. Et per Holt C. J. Debt on a By-Law made by a Corporation, is founded on the Wrong of the Party in not submitting to the Order of the Government of the Corporation, and it arises from his Contempt and Disobedience, and in such Cases no Wager ought to be allowed: So it is in Debt for an Escape, for it supposes a Wrong, and the Action lies not against the Executors: So it is in Debt for Substitution of Cithes: So it is in Debt against an Executor on a Devastavit, because it supposes a Wrong, and therefore the same Action lies not against the Executor of the Executor.

(2)
Wager of Law lies not in Debt on a By-Law, nor any Action where a Wrong is supposed.

By Common Law, if a Contract was secret and wanted Witnesses, it was a Privilege on the Plaintiff's Side as well as the Defendant's; for if the Contract was secret, the Plaintiff had the Privilege of putting the Defendant to his Oath. This appears from Magna Charta. Nullus ballivus ponet aliquem ad legem manifestam, nec ad sacramentum simplici loquela sua sine testibus fidelibus. Before this, the Plaintiff on his Declaration upon bare Affirmance, might make the Defendant swear there was nothing due. At this Day, if the Plaintiff produce Witnesses to prove his Demand, the Court may put the Defendant to wage his Law; and in such Case the Defendant is not at Liberty to cross-examine, no more than where the Plaintiff in a Prohibition produces Witnesses to prove his Suggestion.

No Wager lies but where the Debt arises from a simple Contract that is secret, and not where the Action is founded on any Thing that is notorious. In Accompt, if the Receipt was by the Defendant, the Defendant may wage, not if by the Hands of a third Person: It is true, the Law is otherwise in Detinue on a Bailment; for tho' the Bailment was by the Hands of a third Person, the Defendant may wage his Law; but here the Bailment is not traversable, but the Detainer, and that is the Point of the Action, and the Redelivery might be private.

Wager lies in Accompt if he received of the Plaintiff, not of a Stranger.

And in Detinue, whether his Receipt was of the Plaintiff or a Stranger. In Debt for Arbitrament.

In Debt on an Arbitrament (I intend where the Submission is by Parol) the Defendant may wage his Law; because, tho' the Arbitrators, who are Strangers, are concerned, yet the Submission might be secret; and that is the Foundation from whence the Debt arises.

In Debt for an Amerciament in a Court-Baron, the Defendant may wage his Law; the Reason is, because the Matter is of small Value which concerns the Lord only; transacted in Pais,

In Debt for an Amerciament in a Court-Baron.

But not on a
Judgment in
a Court-Baron.

which might be without his knowledge: But in Debt on a Judgment in a Court-Baron, the Defendant cannot wage his Law; for the Judgment could not be but by Confession or Verdict, and it was in a proper Court; all which the Defendant cannot by his bare Oath falsify, and the Authorities to the contrary are not Law: And so it is in Debt on a Judgment in a Court of Ancient Demesne. Br. Leygager 11, 34.

Lies not in
Debt for
Rent, and the
Reason.

In Debt for Rent on a Lease-Parol, the Defendant cannot wage his Law, because his Occupation is notorious, which is a better Reason than because it labours of the Realty; and so it is in Accompt against a Bailiff for the same Reason, his Management and Transaction being notorious.

Not in Debt
by a Gaoler
for Meat and
Drink.

In Debt brought by a Gaoler against his Prisoner for Meat and Drink, the Defendant cannot wage, not because the Gaoler is obliged to find him Victuals, that is not true, as appears by Plowd 68. a. but because the Defendant is in Durance, and the Plaintiff cannot take Security from him for Repayment; for a Bond will be both, so that he must be content with a Promise: And he did not deny the Case of 9 Co. 87. b. 88. a. which was Debt by a Labourer; it is but just that the Plaintiff should prove he was retained, rather than that the Defendant should be put to wage his Law.

In Debt on a By-Law made by a Company, the Defendant in a Case cited to be in B. R. about two Years before, waged his Law; but Holt C. J. said it was, because the Counsel for the Plaintiff did not challenge it; for he wondered at it then; but this is not so strong as Debt on a By-Law by a Corporation; for this obliges all Strangers without Notice; but the other only their own Members, till Notice: And the Chief Justice denied the Case in Co. Ent. 118. and the Case 2 Ro. Ab. 106. Pl. 9.

Note, A Bailiff may not wage his Law, but a Receiver may. Cro. El. 790.

WAR-

WARRANTY.

Vida 2 Inst.
276.
1 Co. 2.
Cro. Car. 483.
Cro. El. 721.
Lutw. 853.
Stat. 4 & 5
Ann. c. 16.

Smith *versus* Tyndall. Pasch. 4 Ann. B. R.

IN Ejectment, a Case was made for the Opinion of the Court: Maximilian Taylor being seized in Fee, made his Will in the Year 1674, and thereby gave several personal Legacies; and amongst others, four Coats to four poor Boys of the Parish of J. S. for ever; and then he devised all his Lands, Tenements and Hereditaments whatsoever, and likewise all his Goods, Chattels, Money, and personal Estate, to Margaret his Wife, and her Assigns, and made her Executrix, and left 1000 l. personal Estate. Margaret married Archibald Tyndal, and they two by Indenture covenant to levy a Fine to the Use of them two for their Lives, Remainder to Archibald and his Heirs with Warranty, and accordingly a Fine was levied.

1st, The Court held this Devise to Margaret was a Fee, because it was subject to a perpetual Charge.

2dly, That in Case it was not, yet that the Heir of Margaret was bound by this collateral Warranty.

3dly, That tho' a Cestuiq; Use is in the Poss and not in the Per, yet he may take Advantage of a Warranty annexed to his Estate, according to Lincoln College Case; ratio est, because by the Statute of Uses, the Estate in Law in Possession, is transferred to his Use, and he is Tenant of the legal Estate, and has all Advantages that the Tenant had before to defend his Estate; therefore he may rebut, for that is to defend; but he cannot vouch, for that is to recover in Value for the Loss.

4thly, The Court held, That the Plaintiff in Ejectment may make Title by a collateral Warranty, and give it in Evidence as his Title, according to 10 Co. 97. So if a Disseisor dies after five Years quiet Possession, and the Disseisee enter, the Heir may maintain an Ejectment, for the Right of Possession belongs to the Heir, tho' the mere Right be in the Disseisee: So if a Man enters by Wrong and disseises another, and continues twenty Years in quiet Possession, yet in these Cases, if a Writ of Right were brought, and the Wile joined upon the mere Right, the Verdict must be for the Plaintiff, notwithstanding the Statute of Limitations in the one Case, or the collateral Warranty in the other.

Cestuiq; Use may take Advantage of a Warranty annex'd to the Estate.

3 Co. 58, 59, &c.

8 Co. 54.
Lutw. 853.

Plaintiff in Ejectment may make Title by a collateral Warranty.

Rights of Entry are bound by collateral Warranty.
Vide Stat. 4.
5 Ann. c. 16.
Warranty binds, not extinguishes a Right.

5thly, That Rights of Entry are bound by collateral Warranty as well as Rights of Action.

6thly, That no Warranty extinguishes a Right, but only binds or bars it as long as the Warranty continues in Force; for if the Warranty be released, the ancient Right revives. Litt. §. 708.

Vide Cro. El.
694
9 Co. 28.
1 Keb. 309.

Waifs, Estrays, &c.

Henley *versus* Walsh. Mich. 4 Ann. B. R.

Owner of a Stray may seize it, tendering Satisfaction.

TRESPASS for his horse: Defendant pleaded, That one Pooley was Owner of the horse, and that the horse estrayed out of his Possession and came to the hands of the Plaintiff, and that he by Command of Pooley demanded the horse within a Year, &c. and tendered Amends, and that the Plaintiff refusing to deliver him, he took him; to this there was a frivolous Replication, and upon that a Demurrer. Et per Cur'.

1st, Without telling any Marks or making any Proof of Property (which may be done upon the Trial) the Owner may seize his horse where he finds him. Vide Co. Ent. 40, 170. b. Rast. 680. 7 H. 6. 2. 44 E. 3. 14. Br. Estray 1.

And 2dly, Tho' the Defendant does not plead directly that he tendered Amends, but only that he demanded the horse proferendo Satisfaction, yet the Court held this a direct Affirmation, like the Case of Warrantizando vendidit; where the Participle affirms as directly as a Verb; so dans plagam mortalem is well enough. Vide 2 Cro. 630. 4 Co. Long's Case.

And in Pleading it, he need not shew a certain Sum.

3dly, The Court held, That tho' it was said he tendered Amends generally, and did not express any certain Sum, yet that was good in this Case; and a Difference was taken between this Case and that of a Tender of Amends for a Trespass. In that of a Trespass if the Defendant pleads a Tender of Amends, he must shew what he tendered; for he must tender a certain Sum; and the Law puts this Difficulty upon him, because he is the Wrong-doer, and the other is confessedly a Party injured: But the

the Owner of the Stray is no Wrong-doer, and it is impossible he should know how long his Horse had been in the Lord's Custody, nor how much will make a proper Satisfaction.

Another Exception was, That the Defendant does not aver the Amends tendered was refused. Et adjournatur. Vide Cro. El. 888, 889. 1 Ro. Ab. 879. 2 Ro. 92. 1 Sid. 13.

Weights and Measures:

Vide Stat. 8
Ann. c. 18.
Lamb. 356.
Dalt. 146,
155.
Baker's
Chron. 43.

Dominus Rex *versus* Flint. Mich. 10 Will. III. B.R.

TH E Defendant was indicted for not making his Bread of lawful Weight, and demurred to the Indictment; and Mr. Buxton took Exception, That it was only debitum pondus minime habens, not shewing how much debitum pondus was, and what was wanting; and this was agreed to be a fatal Exception by Holt C. J. And whereas it was said the Demurrer had confessed a Deficiency, the Court held the Demurrer confessed nothing but what was well pleaded.

In Indictment
for making
light Bread,
it is not e-
nough to
shew that it
had not due
Weight
without
shewing
what is due
Weight.

Vide ante
570. & Tit.
Revocation,
592.

Wills and Testaments.

Shires *versus* Glascock. Pasch. 3 Jac. II. C. B.

The Attestation good within the Statute of Frauds if the Testator might see the Witnesses sign, if he pleas'd.

UPON a feigned Issue, the Question was, Whether the Will was made according to the Statute of Frauds? For the Testator had desired the Witnesses to go into another Room, even Doors shut, to attest it, in which there was a Window broken, thro' which the Testator might see them. Et per Cur'. The Statute required attesting in his Presence, to prevent obtruding another Will in Place of the true one: It is enough if the Testator might see, it is not necessary that he should actually see them signing; for at that Rate if a Man should but turn his Back or look off, it would viciate the Will. Here the Signing was in the View of the Testator; he might have seen it, and that is enough. So if the Testator being sick should be in Bed and the Curtain drawn.

I

WIT.

WITNESSES.

[Vide Title Evidence and Proof, p. 555.]

Dominus Rex *versus* Crosby. Pasch. 7 Will. III. B. R.S. C. & Mod.
15.
3 Lev. 426,
427.
(1)

On a Trial at Bar for High Treason, the Prisoner, Mr. Crosby, took Exception to Aaron Smith's Evidence, having stood in the Pillory upon a Judgment in an Information against him for a Libel. Mr. Solicitor and Mr. Cowper insisted, That the Infamy flowed from the Crime and not from the Punishment, and that Mr. Smith's Crime was not infamous, nor did it deserve such Punishment. Holt C. J. without determining this Point held, That Aaron Smith was restored by the general Pardon of 2 W. & M. which operated by Way of Restoration, and made him a new Creature. 3 Lev. 427. Vide the Case of Chester *versus* Hawkins, That the Disability flows from the infamous Judgment, and not from the Nature of the Crime; for if a Man be convicted for a Cheat, and adjudged to stand in the Pillory, he cannot be a Witness, otherwise if he be not adjudged to stand in the Pillory: Also they held the Infamy was by the Judgment to stand in the Pillory, and not from the actually standing there, and that he was disabled to be a Witness, tho' he never stood. Nota, In these Cases the Disability is a Consequence, and the Pardon which makes him de cetero a new Creature, discharges all Consequences, Dependancies, &c. And therefore in the Case of the King and Weedon Ford, Mich. 12 W. 3. B. R. The Question being where the King could pardon the Disability, and where not? Holt C. J. took this Difference; Where the Disability is only the Consequence of the Judgment, the King may pardon it; but where the Disability is Part of the Judgment it self, the King's Pardon will not take it away; therefore if a Man be convicted of Perjury on the Statute, the King's Pardon will not restore; for it is not a Consequence, but Part of the Judgment, viz. Quod imposterum non sit receptus ut testis. Vide Co. Ent. 368. But a Pardon by Act of Parliament will restore him in that Case. Quod nota. Quere of a Perjury at Common Law; and if the Law be

Whether the Infamy arises from the Crime or Judgment of the Pillory. Q. Vide ante 461, 514. Post pl. 3. 5 Mod. 74. Farrel. 101. Hob. 59. Raym. 74.

The King may pardon Disability where it is only Consequence of the Judgment; otherwise where Part of it; but in that Case a Statute pardon will.

be the same; for there the Disability is only a Consequence, and not Part of the Judgment; otherwise if a Jury be convicted in an Attaint. Rast. 86. a.

Pitman *versus* Maddox. Hill. 11 Will. III. Coram Holt C. J, *At Nisi Prius in Middlesex.*

(2)
Shop-book
allow'd as
Evidence on
Proof of the
Servant's
Hand, who
made the En-
tries, he be-
ing dead.
Vide ante
281, 285, 555.
& Farell. 9.

INDEBITATUS ASSUMPSIT on a Taylor's Bill; at the Trial coram & per Holt C. J. a Shop-book was allowed for Evidence, it being proved that the Servant that wrote the Book was dead, and this was his hand, and he accustomed to make the Entries; and no Proof was required of the Delivery of the Goods; and the Chief Justice said, it was as good Evidence as the Proof of a Witness's hand to an Obligation; and he held, That tho' the Stat. 7 Jac. 1. c. 12. says, A Shop-book shall not be Evidence after the Year, &c. That it is not of it self Evidence within the Year.

Dominus Rex *versus* Ford. Mich. 12 Will. III. B.R.

(3)
Prisoner ha-
ving escaped
may be a
Witness to
prove the Es-
cape volun-
tary, upon
Traverse of
an Inquisition
for the Office
against the
Gaoler.
Post pl. 5.

UPON a Special Commission issued out of Chancery, an Inquisition was taken, which found, That Weedon Ford had committed five voluntary Escapes; Ford traversed, and upon the Trial, one who was suffered to escape, but was returned again, was produced to be a Witness: And it was objected, That this was to save his own Bond which he had given to be a true Prisoner, and would entitle him to an Action of false Imprisonment against the Marshal, and compared it to the Case of an usurious Bond. Sed per Cur'. The Bond given by the Prisoner is a collateral Matter to the Escape; and the Consequence of his Evidence as to that Bond, is not material to disable his being a Witness; and it is not like the Case of Usury; for that renders the Bond void; and this is a Matter privately transacted between the Party and the Officer, of which there can be no other Evidence.

And, That this Witness was convicted of Barretery, and the Record produced; but the Judgment was, to be fined 500 Marks, and not to stand in the Pillory: On the other Side it was argued, That a bare Conviction of Perjury would take away one's Evidence, because it is an infamous Crime; but not so of Barretery, which was not of an infamous Nature, without an infamous Punishment, as the Pillory. Curia contra. He is disabled by the Conviction, for 'tis not the Nature of the Punishment, but the Nature of the Crime and Conviction that creates the Infamy.

The Nature
of the Crime
and Convi-
ction, not of
the Punish-
ment, makes
the Infamy.
Vide ante
pl. 1.

Then 'twas insisted, That he was pardoned by the late general Pardon. Et per Holt C. J. If one be convicted of Perjury upon the Statute, he cannot be restored to his Credit by the King's Pardon; for by the Statute, 'tis Part of the Judgment, that he be infamous and lose the Credit of Testimony; but he may by a Statute Pardon. But in other Cases, where the Infamy is only the Consequence of the Judgment, the King's Pardon may restore the Party to his Testimony. Held upon a Trial at Bar.

Perjury.
Vide ante
513. 514. 689.
6 Mod. 168.
1 Hawk. P.
C. cap. 69.

Anonymus. Pasch. 13 Will. III. B. R.

If a Witness going to Sea be by Rule of Court examin'd upon Interrogatories before a Judge, and the Trial come on before he is gone, his Deposition shall not be read, but he must appear; for the Rule was made on Supposal of his Absence.

(4)
Deposition of
a Witness ex-
amin'd before
a Judge, be-
cause going
555, &c. ibi.

beyond Sea, cannot be read if he be in England. Vide ante

Inter Oxenden Bar. and Pencerice. In Canc.

A Question was in Chancery, Whether a Legatee could be a Witness against a Will? Et per Cur. upon Debate, The Reason why a Legatee is not a Witness for the Will, is, be- cause he is presumed to be partial in swearing for his own Inter- est: But the Legatee, when he swears against the Will, swears against his Interest, and so is the strongest Witness.

(5)
Legatee may
be a Witness
against a
Will.
Vide ante
pl. 3.

Independent prayer-faced. Belshazzar was not capable in the Spirit.

Independent
prayer-faced
Belshazzar was
not capable in
the Spirit.

Coxeter v. Taylor. Hill 10 Will. III. B. R.

Vol. II. **Word** of saying of him, and he wondered the Bishop would lay his Hands upon such a Fellow, and that he believed to have his Crown pulled over his Ears: And a prohibition was granted for a Bar. and is not punishable in the Spiritual Court for being a Heretic as a Belshazzar, more than another Heretic; and because it was urged, that a Heretic might be degraded for want of learning; the Chief Justice said, It is not the State he is in, but his Hereticism at Law; for that was a temporal Punishment: And a Prohibition was granted.

(6)
Word of saying
of him, and he
wondered the
Bishop would
lay his Hands
upon such a
Fellow, and
that he believed
to have his
Crown pulled
over his Ears:
And a prohibition
was granted
for a Bar.

Vide ante
548, 661.

Words in General.

Smith *versus* Wood. Mich. 5 W. & M. B. R.

(1)
To call a
Whore-ma-
ster, is punishable
in the Spirit-
ual Court.
Vide Lev.
17, 18, 119,
137.

LIBEL in the Spiritual Court for these Words; You are a Rogue, Rascal, Whore-master, and Son of a perjured Affliction-Bitch. Selby moved for a Prohibition, and all the Words being waived but the Words Whore-master, he urged, That it was only a Word of Heat, and that Words of Passion were not defamatory, being regarded by the Hearers, no more than the Words of one Non Compos, or mad; *ira furor brevis est.*

Holt C. J. To say Whore-master of a Man is the same with Whore of a Woman, which is an Ecclesiastical Slander. *Et per Selby, The Reputation of a Man is not so nice; but the Court would not distinguish them, and therefore denied the Prohibition.* Holt C. J. said, To call a Man a Whore was not an Ecclesiastical Slander, but a Criminal one; for it imports his Knowledge and Consent to his Wife's Whoredom. Vide 1 Sid. 348. Cro. Car. 339.

Impudent
brazen-fac'd
Belzebub, not
suable.

Impudent brazen-faced Belzebub are not suable in the Spiritual Court, for they import Passion, but no Crime nor Discredit any more than Devil, or Prince of Darkness.

Coxeter *versus* Parsons. Hill. 10 Will. III. B. R.

(2)
Suit lies not
in the Spirit-
ual Court for
Words,
charging an
Offence not
punishable
there.
Vide Farell.
31.

DOctor Parsons libelled against Coxeter in the Spiritual Court, for saying of him, He had no Sense, was a Dunce, and a Blockhead; and he wondered the Bishop would lay his Hands upon such a Fellow, and that he deserved to have his Gown pulled over his Ears: And a Prohibition was granted; for a Parson is not punishable in the Spiritual Court for being a Knave or a Blockhead, more than another Man; and whereas it was urged, That a Parson might be deprived for Want of Learning; the Chief Justice said, If that be the Case he must bring his Action at Law; for that was a temporal Damage: And a Prohibition was granted.

Acebery versus Barton. Pasch. 4 Ann. B. R.

A Woman libelled in the Ecclesiastical Court against another for these Words, You are a brandy-nosed Whore, You stink of Brandy: Mr. Earle moved for a Prohibition, insisting, they rather charged Intemperance than Incontinence. Vide 2 Ro. Ab. 296. Placito 15. 1 Jo. 44. 1 Cro. 110. 2 Keb. 334, 577, 581. 1 Sid. 433. 1 Mod. 23. 3 Lev. 119. But the Court denied a Prohibition.

(3)
Words of In-
continence.

Words actionable or not actionable.

Tassan versus Rogers. Mich. 1 W. & M. B. R.

CASE for Words of a Butcher, on a Colloquium of the Cow and the flesh, that the Cow died with calving, per quod he lost such and such Customers: Verdict and Judgment pro Quer' in the Marshalsea; but on a Writ of Error it was reversed here; for the Words are not actionable; and the Special Damage does not help it; for it is not said he could not sell the rest of his Cow, but that he lost Customers.

(1)
Words of a
Butcher, that
the Cow died
of Calving,
per quod he
lost his Cu-
stomers, not
actionable.

Byron versus Elmes. Mich. 8. Will III. B. R.

IN Case for Words, the Plaintiff declared, That she being a young Woman, the Defendant, to hinder her Marriage, said, What did you go to London for, but to drop your Slink? She went to London last Winter to lie in, and to my Knowledge several People have lain with her: And they were held not actionable; for it is not having a Ballard, but the Fornication is the Crime here, and that being punishable in the Spiritual Court,

(1)
Charge of
Fornication
not actionable
without spe-
cial Damage.

is not punishable here without a Temporal Loss: Having a Bastard was never actionable before the Statute; nor is it since, unless the Parties come within the Penalty of the Statute, which is only when the Parish is chargeable.

Anonymus, Mich. 8 Will. III. B. R.

(3)
She had a Bastard, not actionable because it don't appear that it was chargeable to the Parish.

CASE for these Words, She had a Bastard-Child, and said for the Plaintiff; and the Court thought them not actionable, according to Salter and Brown's Cases. Cro. . and denied Anne Davies's Case, 4 Co. 16. b. for she is not punishable at Common Law in the King's Temporal Courts for having a Bastard; nor is she punishable by 18 Eliz. unless her Bastard be likely to become chargeable to the Parish; the Statute only extends to such Bastards. In other Cases she is only punishable in the Spiritual Court for whoring, and may sue there, but cannot sue here too; for the Party would be doubly punished by that Means. Sed adjournatur.

S. C. 5 Mod: 398.

Savage *versus* Robery. Pasch. 10 Will. III. B. R.

(4)
You are a Cheat, spoke of a Trader, not actionable without laying a Colloquium of his Trade.

THE Plaintiff declared that he was a Trader, and the Defendant said of him, You are a Cheat, and have been a Cheat for divers Years: Upon the first Motion, which was Mich. 9 W. 3. B. R. Holt C. J. held, the Words must be understood of his Way of Living, and that it needed no Colloquium. But Pasch. 10 W. 3. B. R. Mutata opinione, Judgment was arrested. Vide 1 Vent. 417, 262. 2 Saund. 307. Jones 156. Raym. 62, 169.

S. C. Farel. 107.

How *versus* Prinn, Mich. 1 Ann. B. R.

(5)
Don't vote for him, for he is a Jacobite, and for bringing in the Prince of Wales and Popery, to destroy our Nation's peace of a Justice of Peace and Deputy-Lieutenant, held actionable.

THE Plaintiff declared, That being a Justice of Peace and Deputy-Lieutenant, and having served as Knight of the Shire for the County of Gloucester, and intending to stand Candidate again to be Knight of the Shire for the same County, the Defendant in Discourse with J. S. speaking of the Plaintiff and his standing Candidate, said; Do not vote for him, for he is a Jacobite, and for bringing in the Prince of Wales and Popery, to destroy our Nation: Verdict for the Plaintiff and intire Damages.

In Arrest of Judgment 'twas objected,

1st, That it was uncertain where the Prince of Wales should be brought in.

adly,

2dly, That there was no such Person, and the Court could not take Notice of him.

3dly, He might mean it legally by Act of Parliament.

4thly, He is not charged with any Act.

5thly, The Offices recited were not Offices of Profit. Sed per Cur'.

1st, The Words being spoken with respect to an Englishman, therefore the bringing in must be supposed to be into England; the rather, because 'tis said to be, to destroy our Nation; and the Defendant could not have been found guilty, if he had appeared upon Trial to be a Dutchman, as in Cromwell's Case, Thou art a Murderer; upon Evidence, it appeared to be spoke in the Sense, a Murderer of Horses; and the Defendant was acquitted.

2dly, We will take Notice of the Prince of Wales, not as really such, but pretendedly such, being mentioned in Acts of Parliament; and one may gain a Name by Reputation, as a Bastard does that of his reputed Father.

3dly, We cannot suppose he can mean to do this fairly; but if he does, 'tis Scandal; for the King and Government being Protestant, 'tis good Reason for them to displace him, as not fit to be trusted.

4thly, As to his not being charg'd with any Act, Inclination and Principles are sufficient without an Act. 3 Lev. 90. 1 Brownlow 5. March 4. 1 Ro. 86. Ellis's Case, and so was Sir Tho. Clargis's Case.

5thly, In Offices of Profit, Words that impute either Defect of Understanding, of Ability or Integrity, are actionable; but in those of Credit, Words that impute Want only of Ability, are not actionable, as of a Justice of Peace: He a Justice of Peace? He is an Ass, and a beetle-headed Justice: Ratio est, because a Man cannot help his Want of Ability, as he may his Want of Honesty; otherwise where Words impute Dishonesty or Corruption, as in this Case, where the Office is an Office of Credit, and the Party charged with Inclinations and Principles which shew him unfit, and that he ought to be removed, which is a Disgrace.

In Offices of Profit, Words imputing Want of Ability, are actionable; otherwise in Offices of Honour. Vide post 698. Cro. Car. 213.

Baker *versus* Peirce. Mich, 2 Ann. B. R.

S. C. 6 Mod. 23.

YOU stole my Box-wood, and I will prove it, were held actionable, for they tend to disgrace the Plaintiff with an Imputation of Felony, and may be so understood: These sort of Actions stand upon their own Bottom, and are under no set Rule, but ought to be encouraged to prevent breaking the Peace: Thou art

(6)
You stole my Box-wood and I will prove it, actionable. Vide prox. pag. 68.

6 Mod. 104. 1 Jon. 11, 68, 195, &c. Poph. 211. 1 Mod. 22. 1 Lev. 280.

art a Thief and hast stoln my Wood, are actionable. There is no Difference between and and for: To say a Man has the Pox, is not actionable; but to say farther, and got it of a yellow-haired Wench in *Moorfields*, are actionable; not that the Intendment is necessary that he meant the French-Pox, but the Sense leaned that Way.

Graves *versus* Blanchet. Pasch. 3 Ann. B. R.

(7)
See 4 Co. 17,
&c.

ACTION for these Words, She is a Whore, and had a Bastard by her Father's Apprentice; Judgment was arrested: The Court said they could not overthrow so many Authorities: The Reason of the Law is, that Fornication is a spiritual Offence; and no Action lay at Common Law for what the Common Law took no Notice of, without special Damage.

Walmley *versus* Russel. Trin. 3 Ann. B. R.

(8)
There goes
your rare
Chancellor to
suborn Wit-
nesses to swear
against the
Parson, not
actionable.
Vide 3 Lev.
166.
4 Co. 15, 16.

IN Case for Words, the Plaintiff in his Declaration shewed, That he was Chancellor to the Bishop, and stood for Parliament-Man, and the Defendant to defame him said, There goes your rare Chancellor to suborn Witnesses to swear against the Parson. Powys and Gould Justices held them actionable, because they touched him in his Office, and suborning is to be taken in malam partem, and the Words were the saller if there was no Perjury or Swearing. Vide 3 Cro. 93. 1 Lev. 118, 180. 1 Cro. 14, 15, 190. Hard. 103, 501. Mo. 243. 1 Vent. 20. 1 Ro. 79. Holt C. J. and Powell J. contra, To say, a Man is forsworn is not actionable; a fortiori, to say one suborned another to forswear: Suborning is not a Crime of it self, but as it relates to Perjury, and there cannot be a Subornation of Perjury or Swearing, but where there is Perjury and Swearing. Here is nothing said that relates to his Office, or touches it; there goes your rare Chancellor, is only a Description of the Person.

S. C. 6 Mod.
104.

Turner *versus* Ogden. Hill. 3 Ann. B. R.

(9)
Words sub-
jecting H. to
Punishment
may not be
actionable,
unless scan-
dalous.
See 6 Mod.
23. & ante
695.

THOU art one of those that stole my Lord Shaftsbury's Deer; held not actionable; for tho' Imprisonment be the Punishment in those Cases, yet per Holt C. J. It is not a scandalous Punishment. A Man may be fined and imprisoned in Trespass; for there must not only be Imprisonment, but an infamous Punishment; 'tis true, calling Papist has been held actionable, but that was only in respect of the Times.

Speed *versus* Perry. Trin. 4 Ann. B. R.

CASE for these Words, You are a Rascal and a Villain, you have forgot since you lived in the *Black-bull* Yard, there you could procure broad Money for Gold, and clip it when you had so done, and then the Shears could go. Serjeant Darnell moved in Arrest of Judgment, because the Words imputed no Act, but a Power only. Sed per Cur. Where the Matter imputed is confined to a particular Place, As you could in such a Place, they must be understood to imply an Act; for a Power is the same in all Places. And Powell cites the Case of Horne and Powell. Trin. 12 W. 3. C. B. You may well spend Money at Law, for you can coin Money out of Half-pence and Farthings, which was held to import an Act done, because by a bare Power he could never be able to spend Money at Law; and the Court denied 1 Ro. 72. Placito 9.

(10)
In Black-bull
Yard you
could procure
broad Money
for Gold, and
clip it; held
to import an
Act, and acti-
onable.

Words indictable and not in- dictable.

Domina Regina *versus* Langley. Hill. 2 Ann. B. R.

INDICTMENT for saying to the Mayor of Salisbury, You Mr. Mayor, I care not a Farthing for you; and at another Day, You are a Rogue and a Rascal: On Demurrer, Mr. Ward argued, they were not spoken while he was in the Execution of his Office, and that this is no Offence indictable. Vide 1 Ro. Rep. 79. 11 Co. 95. 3 Cro. 78, 689. Mo. 247. 1 Vent. 16. Vide cont. 1 Cro. 503, 504. 1 Bullst. 139, 140. 3 Mod. 139. Holt C. J. These Words are not indictable, for the Mayor was not in Execution of his Office nor a Patent Officer. It might be more doubtful if the Words were of a Patent Officer; for then it is an Aspersions to the Queen and Govern-
ment

(11)
Words of
Slander spo-
ken of a
Mayor, not
indictable;
otherwise if
written.

Clause de verborum prolationibus in the Commission of Oyer and Terminer what it refers to.

ment that employs him: Here it does not appear the Mayor was a Justice of Peace; at least not by Commission from the King; Yet if these Words had been written, an Indictment would have lain. Vide 1 Sid. 270. 1 Lev. 139. Et per totam Curiam, Words that directly tend to the Breach of the Peace, as if one Man challenge another, are indictable; and the Commission of Oyer and Terminer de prolationibus verborum, is to be construed of Words against the Government, or Scandalum Magnatum, &c. But for these Petit Offences, which are contra bonos mores, the Law has another Provision, by requiring Surety for the Peace and Good Behaviour; in Default whereof the Magistrate may commit him, when spoken out of Court; and when in Court, then the Magistrate may proceed summarily against him, and fine him for the Contempt. Quashed.

Vide Cro. Car. 223.

Domina Regina *versus* Wrightson. Pasch. 7 Ann. B.R.

(2)
Words of a Justice of Peace: He is a Fool, an Ass, and a Coxcomb, and knows no more than a Slickhill, not indictable, but Cause to bind to the Good Behaviour.

INDICTMENT for saying of Sir Rowland Gwyn, who was a Justice of Peace, in Discourse concerning a Warrant made by him, Sir Rowland Gwyn is a Fool, an Ass, and a Coxcomb, for making such a Warrant, and he knows no more than a Slickhill, held naught on Demurrer: The Court held, That here was a Breach of Good Manners, and he might be bound to the Good Behaviour; but here was no indictable Offence: The Counsel urged, That the Words spoken of a Magistrate in the Execution of his Office, might be indictable as a Matter that disturbs the publick Peace; yet not when it refers to some particular Act. Vide 2 Keb. 494. Hutt. 131, 1 Cro. 362. 3 Mod. 139. 1 Vent. 169. And Domina Regina *versus* Soley. Mich. 4 Ann. B.R. Who was indicted for these Words, He is not fit to be a Justice; for if a Man is before him, he will give it right or wrong where his Affection is; and ruled the Indictment lay not. Et per Holt C.J. To say, a Justice is a Fool or an Ass, or a Coxcomb, or a Blockhead, or a Bufflehead, is not indictable; quod fuit concess. per Powell. Vide 2 Ro. Rep. 78. 4 Inst. 181.

Ante 695.

(1)
Words of a Justice of Peace: He is a Fool, an Ass, and a Coxcomb, and knows no more than a Slickhill, not indictable, but Cause to bind to the Good Behaviour.

WRIT.
2

W R I T.

Vide ante
Mandamus,
Replevin,
Returns.
Hob. 83.

Touchin's Case. Mich. 12 Will. III. B. R. Vide Title S. C. 1 Salt
Amendment. 48. 49.
6 Mod. 164.
& 276 to 287.

In all continued Writs the Alias must be tested the Day the former was returnable. Vide ante 554. (1)
State Trials,
659 to 706.

Dominus Rex versus The Mayor of Hertford. Mich.
11 Will. III. B. R.

INFORMATION in Nature of a Quo Warranto; a Venire issued returnable in Easter-Term, and a Distringas in Trinity, and an Alias Distringas fifteen Days from the Teste the same Trinity-Term: It was objected, That this was irregular, for that all Process on the Crown-Side is returnable de termino in terminum, and not in fifteen Days, and the Precedents are so: It was answered, That Process of Outlawry was the only Process returnable de termino in terminum. Vide 2 Inst. 550. 1 Inst. 134. 9 Co. 119. b. [Note, These Authorities are general and make no Distinction]. Holt C. J. said, There was no Question but the Process might be sued out returnable in fifteen Days; And Sir Samuel Astry reported the Practice according to this Diversity. (2)
Process out of the Crown-Office may be returnable in fifteen Days, except of Outlawry, which must be de termino in terminum.

Dominus Rex versus The Mayor, &c. of Abingdon. S. C. Ante
Pasch. 12 Will. III. B. R. 431, 432.

A Mandamus was directed Jacobo Courteen Majori Ballivis & omnibus principalibus Burgensibus Burgi de Abingdon, who by the Constitution were to chuse the Mayor out of such Persons as should be propos'd by the Commonalty, commanding them to chuse accordingly: It was objected to the Writ, That it was misdirected; for that this was but a Part of the Corporation, viz. Chief Burgesses; whereas the Name of the Corporation was, Mayor, Balliffs and Burgesses; and it was urged, that Persons constituting a Corporation could be considered, but (3)
Writ of Mandamus ought to be directed to the Persons who are to do the Act.
Vide post pl. 6.

in one of these two Capacities, viz. their Corporate or their Natural; and that the Writ must be directed to them, either by their Names, or as a Corporation; and they cited Holt's Case, 2 Jones 52. in Point. Holt C. J. said, that Case was not Law, That Serjeant Pemberton, Sir William Jones, and all the learned Part of the Bar wondered at the Resolution: And tho' it should be true, that a mandatory Writ might be directed to the whole Corporation, yet it could not be necessary it should be directed to more than those, or that Part of the Corporation that was concerned in the Execution of the Thing required; for it is not in the Power of others to put the Command of the Writ in Execution: And the Writ was held good.

s. C. F. 179.

Shirley *versus* Wright. Trin. 1 Ann. B. R.

(4)
Writ of Execution returnable two Terms from the Teste, is well, & the Process, void

In Debt for an Escape of one taken upon a Ca. Sa. which appeared to be returnable the Term next but one after the Teste, so that a Term interposed: After a Verdict for the Plaintiff, it was moved in Arrest of Judgment, that the Writ was merely void, and consequently there could be no Escape, and the Sheriff did well to let him go; and 3 Cro. 468. was cited as a Case in Point. On the other Side, to shew that a Writ may be faulty, and yet not void, were cited Poph. 371. Dy. 67, 175. 21 H. 7. 16. Sry. 339. 1 Ro. 242. 3 Cro. 188. Mo. 274. 1 Cro. 371. 2 Bullst. 256. 2 Ro. Rep. 432. Per Holt C. J. Escape lies against the Sheriff; and there is a Difference between a Capias in mean Porels, and a Capias in Execution. In mean Porels, if a Term be omitted the Writ is void in all Actions personal, and the Sheriff shall not be charged; for the Cause is discontinued and out of Court by the Intermision; and by not having a Day in Court by the Return of the Writ as he ought, the Party may be at great Prejudice by Reason of the Imprisonment in the mean Time.

But in Executions a Ca Sa. omitting a Term, is not void; for the Party is not to have a Day in Court; his Cause is at an End, and he must be in Prison, whether the Writ be returned, or not; nor is it necessary it should be returned. Per Curiam. The Plaintiff had Judgment, Nisi, &c.

Writ bearing Teste out of Term is void, but the Sheriff is justifiable.

And in the same Case Holt C. J. said, If a Writ of Execution bear Teste out of Term, the Sheriff is justifiable, and yet shall not be liable to an Action of Escape, for 'tis a void Writ.

Helliot

Hellier versus Selby. Trin. 2 Ann. B. R.

In Replevin the Declaration was, that the Defendants Com-
moniti fuerunt ad respondend. de placito Capionis & in fine
detentionis averiarum ipsius, &c. The Defendant showed, and
the Plaintiff pleaded in Bar, and the Defendant made a naughty
Rejoinder, upon which it was demurred; and now Weld took
Exception to the Original, that it was Prolentis, and that there
was no such Word as Averiarum. Holt C. J. If the Original
had been averiarum, it had been naught; but this is only a Re-
cital of an Original, and the Court will not judge upon a Re-
tal; but the Way to take Advantage, is, to crave Oyer; for
this Recital is only a short Intimation to the Court of what the
Kind of the Plea is. Powell J. A Replevin may be by Plaint
in the Country, as well as by Original here, because it is sum-
monitus. And if this Case had been here by Error out of the
Common Pleas, in which Case the Plaintiff could not have
taken Advantage of this Fault by Oyer, then he must have al-
leged Diminution and pray'd a Certiorari; and if the Original
returned had been so, the Court would have reversed the Judg-
ment.

(1)
Defendant
cannot take
Advantage of
an ill Origina-
l by the
Recital, but
upon Oyer or
a Certiorari
Vide ante
497, 658.
6 Mod. 28.

Domina Regina versus The Mayor, &c. of Hereford.
Trin. 4 Ann. B. R.

A Mandamus to admit one to the Office of Town-Clerk was
directed to the Mayor and Aldermen of Hereford; and
Mr. Eyres urged the Writ ought to be directed to the Body-Po-
litical, in whom the Inheritance of the Franchise was, by the
Name of Incorporation; and that was, Mayor, Aldermen and
Citizens; and indeed the Writ was returned by the Mayor, Al-
dermen and Citizens in this Case, and cited 3 Bulst. 190.
Holt C. J. denied that Case, and said, it is enough to direct the
Writ to those that are to execute the Writ, or do the Thing re-
quired: Then it appeared the Mayor only was to admit, whereas
the Writ was directed to the Mayor and Aldermen; and Holt C. J.
thought the Word Aldermen was Surplusage, and the Writ well
enough; Powell J. contra, Writs ought to be directed to those,
and to those only that are to obey the Writ: How will People
know who are to obey the Writ if the Direction is insignificant
or immaterial? If a Writ be directed to the Coroner and Sheriff
where it ought to be to one only, it is naught: Powys and
Gould Justices agreed, and the Writ was quashed.

(6)
Writ of Man-
damus ought
to be directed
to the Per-
sons who are
to do the Act.
Vide ante
431, 479. &
699. pl. 3.

Anonymus. Trin. 13 Ann. In Canc'.

(7)
No exact
Regnum to
stay H.'s go-
ing to Scot-
land since the
Union. Of No
&c. Chan.
Replevin.

A No great Regnum was granted to stay the Defendant from going to Scotland; for tho' that is not out of the Kingdom, yet it is out of the Reach of the Process of this Court, and within the same Mischiefe.

Union: Of Next Regnum, see 2 Inst. 54. 4 Mod. 179. Fard. 9. 3 Mod. 127, 169. 2 Show. 227, &c. 1 Chan. Cases, 115, 116. 2 Chan. Caf. 245. Of Homine Replegiando's & Witherbams vide Tit. Replevin.

Note, A Writ of Covenant is not amendable either by Common Law or by Statute. 1 Salk. 53.

But the danger to take advantage of to take over; the Eastern is only a weak continuation to the Court of what the West of the West is. Powell, J. & Appleton may be by joining in the country, as well as by general law, because it is not a nation. And if this date has been held by every one of the common law, in which date the parties could not have taken advantage of this Court by over then the truth date of the Constitution and part a Court; and if the Constitution should be held by the Court would have received the law.

Thos. J. Allen & Co. of Hartford.
Thos. J. Allen & Co.

Placita

Placita

*Placita coram Domino Rege apud Westm.
de termino Paschæ Anno Regni Domini
Willi. Tertii nunc Regis, &c. Septimo.
Rotulo 242.*

Sir John Dalston versus Janson. Vide fo. 10.

London, ff.

M *Emendandum, Quod abs. scilicet termino Sancti Hill.*
ultimo præterito coram Domino Rege apud
Westm. venit Johan. Dalston Mil. & Barr.
per Johannem Prat Attorn. suum & præ-
tulit in cur. dicti Domini Regis tunc ibidem quandam billam
suam versus Joshuam Janson communem Portatorem in Custod.
Mar. &c. de placito transgr. super casum. Et sunt pleg. de pro-
sequend. scilicet Johannes Roe & Richardus Doe. Quæ quidem billa
sequitur in hæc verba ff. London. ff. Johannes Dalston Mil. &
Barr. queritur de Joshua Janson Comuni Portatore in Custod.
Mar. Marefc. Domini Regis coram ipso Rege existen. pro eo vi-
delt. quod cum præd. Joshua decimo sexto die Martii Anno Do-
mini Millesimo sexcentesimo nonagesimo tertio & diu antea & sem-
per postea fuit & hucusque existit communis Portator, Anglice
Carrier, bonorum & catallorum & pro ejus proficuo bona & ca-
talla quarumcunque personarum hujusmodi cariationem requirent.
a Wakefield in Com. Eborum usque ad London & a London
prædict. usque ad Wakefield præd. per totum idem tempus pro
mercede proinde habend. portare & carriare consuevit. Cumque per
legem & consuetudinem hujus Regni Angl. quilibet communis por-
tator bonorum & catallorum qui bona & catalla alicujus person.
recepit sic portand. eadem absque subtraction. & amission. custo-
dire & portare tenetur. Ita quod in defectu talis communis Por-
tator. seu servien. sui dampnum non eveniat ullo modo. Cumque
idem Johannes eodem decimo sexto die Martii Anno Domini
Millesimo sexcentesimo nonagesimo tertio supradicto apud London
prædict. videlt. in Paroch. beatæ Mariæ de Arcubus in Warda
de Cheape possessionat. fuit de bon. & catall. sequen. videlt. de
una Pyxide abiegna, Anglice, a *Deal-Bax*, & Centum Peciis cu-
neat. auri vocat. *Guineas* legalis monete Angliæ ut de bonis &
catallis suis propriis. Et præd. Johannes sic inde possessionat exi-
stin. eodem decimo sexto die Martii Anno Domini Millesimo sex-
centesimo nonagesimo tertio supradicto apud London præd. vi-
delt. in Paroch. & Warda præd. Pyxidem præd. cum præd. Cen-
tum Peciis auri cuneat. in eadem existen. præfat. Joshuæ ad eadem

Count upon
the Custom
of the Realm
against a com-
mon Carrier.

Trover laid
in the same,
held not join-
able.

Count upon
the Coffer
of the Reven-
ue of the
King's Chamber

Plea.

a London præd. usque ad Wakefield præd. in Com. Eborum præd. pro mercede Salvo & secur. carjand. & ibidem eidem Johanni deliberand. deliberavit & præd. Joshua præd. Pyxidem & præd. Centum pecias auri in eadem existen. adtunc & ibidem ad portand. & dellberand in forma præd. recepit & habuit præd. tamen Joshua ad aliquod tempus postea hucusque Pyxidem prædict. cum præd. centum peciis auri in eadem existen. eidem Johanni non deliberavit sed pyxis præd. & præd. centum pecia auri cuneat. in eadem existen. postea scilt. decimo septimo die Martii Anno Domini Millesimo sexcentesimo nonagesimo tertio supradicto apud London præd. in Paroch. & Warda præd. pro defectu bonæ custod. ipsius Joshuæ perdit. & amissa fuer. Cumque etiam præd. decimo sexto die Martii Anno Domini Millesimo sexcentesimo nonagesimo tertio supradicto apud London præd. videlt. in Paroch. & Warda præd. prædictus Johannes possessionat. fuit de al. bon. & catall. sequen. videlt. de una pixide ablegna, Anglice, *a Deal-Box*, & centum Pecias cuneat. Auri vocat. *Guineas* legalis monet. Angl. ut de bon. & catall. suis propriis Et sic inde possessionat. existen. idem Johannes postea scilt. eodem decimo sexto die Martii Anno Domini Millesimo sexcentesimo nonagesimo tertio supradicto apud London præd. in Paroch. & Warda præd. bona & catalla illa extra manus & possession. suas casualiter perdidit & amisit Quæ quidem bona & catalla postea scilt. eodem decimo sexto die Martii Anno Domini Millesimo sexcentesimo nonagesimo tertio supradicto apud London præd. in Paroch. & Warda præd. ad manus & possession. præd. Joshuæ per invention. devenit. præd. tamen Joshua sciens bona & catalla ult. præd. fore bona & catalla præd. Johannis propria & ad ipsius Johannis de jure spectare & pertinebre machinans tamen & fraudulenter intendens præd. Johannem in hac parte callide & subdole decipere & defraudare bona & catalla ult. prædictidem Johanni nec sapius requisit. &c. nondum deliberavit sed bona & catalla ult. mentionat. postea scilt. decimo septimo die Martii Anno Domini Millesimo sexcentesimo nonagesimo tertio supradicto apud London præd. in Paroch. & Warda præd. ad usum & commodum præd. Joshuæ propr. convertit & disposuit ad dampnum ipsius Johannis Centum & quinquagint. librar. Et inde prodtit libtam, &c.

Et modo ad hunc diem scilt. diem Mercur. prox. post Quinden. Pasche isto eodem termino usque quem diem præd. Joshua habuit licent. ad billam præd. interloquend. & tunc ad respondend. &c. coram Domino Rege apud Westm. venit tam præd. Johannes Dalston Mil. & Barr. per Attorn. suam præd. quam præd. Joshua per Wilhelmum Midgoley Attorn. suam Et idem Joshua defend. vim & injuri. quando, &c. Et dicit quod ipse non est inde culpabilis. Et de hoc non. se super partiam. Et prædict. Johannes Dalston inde similiter, &c. Ideo venit inde Jur. coram Domino Rege apud Westm. die Martii prox. post mensem Pasche Et qui nec,

&c.

&c. ad recogn', &c. quia tam, &c. Idem dies dat. est partibus prædictis ibidem, &c.

*Placita coram Domina Regina apud Westm.
de Termino Sancti Michaelis Anno Reg-
ni Domine Annæ nunc Regine Angliæ.,
&c. Secundo. Rotulo 398.*

Comes Banbury versus Woods & Ux'. Vide fo. 5,

London, ff.

Thomas Woods Mercator & Maria Uxor ejus attach. fuer. ad responden. Carolo Comiti Banbury & Mariæ Comitissæ Banbury Uxori ejus de placito quare ipsam Comitissam ceper. & captam tenent, &c. Et unde iidem Comes & Comitissa per Ric'm Longford Attorn. suum queruntur quod prædictus Thomas Woods & Maria Ux. ejus Vicesimo die Aprilis Anno Regni Domine Annæ nunc Regine Angliæ, &c. Secundo apud London præd. videlt. in Paroch. Sanctæ Hellenæ in Warda de Bishopsgate ipsam Comitissam ceper. & ipsam adhuc captam tenent Unde dicunt quod deteriorat. sunt & dampnum habent ad Valenciam decem Mille Librarum Et inde produc. sectam, &c.

Count in ho-
mine repleg'.

Et prædictus Thomas Woods & Maria Ux. ejus per Richardum Ath Attorn. suum ven. & pet. Audit. brevis Original. prædict. & retorn. ejusdem brevis Et eis leguntur in hæc verba ff. Anna Dei Gratia, Angliæ, Scotiæ, Franciæ & Hiberniæ Regina Fidei Defensor, &c. Vicecomitibus London salutem. Cum plur. vobis præceperimus quod juste & sine dilatione repleg. fac. Mariam Ux. Caroli Comitis Banbury quam Thomas Woods Mercator & Maria Ux. ejus ceperunt & captam tenent ut dicitur nisi cap. fuit per speciale præceptum nostrum vel capitalis Justic. nostri vel pro Morte hominis vel pro foresta nostra vel pro aliquo alio retto quare secundum consuetud. Angliæ non est replegiabilis ne amplius inde clam. audiamus pro defectu Justic. vel causam nobis significetis quare mandat. nostrum alias vobis inde direct. exequi noluitis vel non potuistis Ac vos spretis nostris prædictis ut accepimus

Oyer of the
Writ.

mus

mus præd. Mariam Ux. præd. Comit. repleg. vel saltem causam quare id facere noluitis vel non potuistis nobis significare hæcenus non curaveritis in nostrum ac mandatorum nostrorum contemptum manifestum ac ipsorum Comit. & Comitissæ dampnum non modicum & gravamen de quo miramur quamplurimum & movemur Vobis adhuc præcipimus firmeter injungen. quod prædictâ Mariam Uxor. prædict. Comit. repleg. faciat. juxta tenorẽ mandatorũ nostrorũ præd. prius vobis inde direct. vel vos ipsi sitis corâ nobis à die Sancti Michaelis in unũ Mensẽ ubicunque tunc fuerimus in Angl. ostens. quare mandat. nostra præd. toties vobis inde direct. exequi contempsistis Et habeatis ibi hoc breve Teste me ipsa apud Westm̃ Vicefimo secundo die Junii Anno Regni nostri secundo (Cæsar) Virtute istius brevis nobis direct. certificamus quod null. aliud breve vel mandat. dictæ Dominæ Reginae infra script. de replegiando infra nominat. Mariam Ux. Caroli Comit. Banbury quam infra nominat. Thomas Woods & Maria Ux. ejus ceperunt & captam tenent prout interius specificat. quam istud breve de plur. repleg. præd. Mariam Ux. Caroli Comit Banbury ad manus nostras devenerunt, nec eorum alterum devenit, nec nobis deliberatum fuit Et ulterius dictæ Dominæ Reginae certificamus quod prædicta Maria Uxor. Caroli Comit. Banbury elongat. est ad loca nobis incogn. per præd. Thomam Woods & Mariam Ux. ejus per quod prædict. Mariam Ux. Caroli Comit. Banbury repleg. non possumus prout interius nobis præcipitur. Respons. Giberti Heathcote Militis & Josephi Wolfe Armigeri Vic. Quibus lectis & auditis iidem Thomas Woods & Maria Ux. ejui petunt judicium de brevi præd. quia dicunt quod per formam Statut. additio de Villa vel Hamlett. seu loco & Com. Comorand ipsius Thomæ in præd. brevi Original. præd. Caroli Comit. Banbury & Mariæ Comitissæ Banbury Ux. ejus contineri debuit Et hoc parati sunt verificare. Unde ex quo hujusmodi additio in eodem brevi non continetur iidem Thomas & Maria petunt judicium de brevi prædict. Et quod breve prædict. cassetur, &c.

Plea in Abatement.

Demurrer.

Et prædictus Carolus Comes Banbury & prædicta Maria Comitissa Banbury Ux. ejus dicunt quod per aliqua per prædictos Thomam & Mariam Ux. ejus superius in cassation. brevis placitat. breve ipsorum Comit. & Comitissæ cassari minime debet quia dicunt quod placitum præd. per præd. Thomam & Mariam Ux. ejus modo & forma præd. superius placitat. materiaq; in eodem content. minus sufficien. in lege existunt ad breve ipsorum Comit. & Comitissæ prædict. cassand. Ad quod quidem placitum ipsi iidem Comes & Comitissa necesse non habent nec per legem terræ tenentur aliquo modo respondere Et hoc parati sunt verificare. Unde pro defectu sufficien. placiti ipsorum Thomæ & Mariæ Ux. ejus in hac parte ipsi iidem Comes & Comitissa petunt judicium & quod breve ipsorum Comit. & Comitissæ bon. adjudicetur

dicatur Et quod prædicti Thomas & Maria ad breve illud ulterius respondeant, &c.

Et prædicti Thomas Woods & Maria Ux. ejus dicunt quod placitum præd. per ipsos Thomam & Mariam modo & forma præd. superius placitat. materiaque in eodem content. bon. & sufficien. in lege existunt ad breve præd. ipsorum Comitissæ & Comitissæ cassand. quod quidem placitum materiamque in eodem content. ipsi iidem Thomas & Maria parati sunt verificare prout Cur', &c. Et quia præd. Comes & Comitissa ad placitum ill. non respond. nec ill. hucusque aliquantulum deduc. ipsi iidem Thomas & Maria ut prius petunt judicium de brevi præd. Et quod breve ill. cassetur, &c. Sed quia Cur. dictæ Dominæ Reginæ nunc hic de judicio suo de & super præmissis reddend. nondum advisatur dies inde datus est partibus prædictis coram Domina Regina usq; ubicunque &c. de judicio suo de & super præmissis ill. audiend. eo quod Cur. dictæ Dominæ Reginæ nunc hic inde nondum &c.

Joinder.

*Placita coram Domina Regina apud Westm.
de termino Sancti Michaelis Anno Regni
Domine Annæ nunc Regine Angl.
&c. Primo. Rot. 344.*

Haywood *versus* Davies, & al. Vide fo. 4.

Midd. ff. **M**emorandum, Quod die Veneris prox. post tres septimanas Sancti Michaelis isto eodem termino coram Domina Regina apud Westm. ven. Rebecca Haywood per William Smyth Attorn. suum Et profert in Cur. dictæ Dominæ Reginæ nunc hic quandam billam suam versus Margaret' Davis als. Davison & Mariam Bonner in Custod. Mar', &c. de placito transgr. Et sunt pleg. de prosequend. scilicet Johannes Doe & Richardus Roe Quæ quidem billa sequitur in hæc verba scilicet. Midd. ff. Rebecca Haywood queritur de Margareta Davis als. Davison & Maria Bonner in Custod. Mar. Marefc. Dominæ Reginæ coram ipsa Regina existen. de eo quod ipsa eadem Margaret. & Maria primo die Octobris Anno Regni Domine Annæ nunc Regine Angl. &c. primo

Trespass for breaking and entering the Plaintiff's Close and Yard, and disturbing the Possession,

vi & armis, &c. Clausum & aream ipsius Rebeccæ apud Paroch. de Stebunheath als. Stepney in Com. Middlesex prædict. freger. & intraver. & ipsam Rebeccam in quiet. usu & occupation. clausi & Areæ præd. adtunc & ibidem disturbaver. & impediver. necnon de eo quod ipsæ eadem Margareta & Maria postea scilt. die & Anno supradict. vi & armis, &c. al. clausum & aream ipsius Rebeccæ apud Paroch. & Com. præd. freger. & intraver. & quingent. siculas aquæ Anglice vocat. *Pails of Water* & al. aquam ipsius Rebeccæ ad valenc. vigint. solid. a quodam fonte ipsius Rebeccæ apud Paroch. & Com. præd. existen. sine licenc. ipsius Rebeccæ & contra ejus voluntat. ab & ex fonte præd. adtunc & ibidem ceper. & asportaver. necnon de eo quod ipsæ eadem Margareta & Maria postea scilt. eisdem die & Anno ult. supradict. vi & armis, &c. magnam quantit. cœni soli & aquæ in & super terram & al. Aream ipsius Rebeccæ apud Paroch. & Com. præd. adtunc & ibidem posuer. locaver. effund. & projecer. Et al. enormia eidem Rebeccæ adtunc & ibidem intuler. contra pacem dictæ Domine Reginæ nunc Et ad dampnum ipsius Rebeccæ tringint. & novem solid. Et inde produc. sectam, &c.

Plea of Tenancy in Common in Abatement.

Et prædict. Margareta & Maria in propriis personis suis ven. & defend. vim & injur. &c. Et petunt judicium de billa prædict. ipsius Rebeccæ & quod billa ill. cassetur quia dicunt quod clausum & area necnon loci in quibus supponitur. transgr. præd. fieri sunt & dicto tempore quo, &c. fuer. una acra terræ quodque prædict. Rebecca dicto tempore quo, &c. nichil habuit in eadem acra terræ nisi insimul & pro indiviso cum prædict. Maria Bonner quæ in plena vita exist. apud Paroch. de Stepney in Com. Middlesex Et hoc parat' sunt verificare Unde petunt judicium de billa prædict. & quod billa ill. cassetur, &c.

Repl'.

Et præd. Rebecca dicit quod billa ipsius Rebeccæ præd. ratione præallegat. cassari non debet quia dicit quod ipsa sepeal. temporibus sepeal. transgr. præd. fieri supposit. fuit sola seiscita de præd. clauso & area in narr' ipsius Rebeccæ prius mentionat. Ac etiam de præd. clauso & area in Nar. præd. ipsius Rebeccæ secundo mentionat. & de præd. fonte in Nar. ill. similiter mentionat. Ac etiam de tertia Area in Nar. præd. ipsius Rebeccæ tertio mentionat. Quodq; præd. Margareta & Maria dict. sepeal. tempor. quibus, &c. sepeal. transgr. præd. fecer. prout eadem Rebecca per Nar. snam præd. superius versus eas queritur Absque hoc quod prædict. Maria Bonner respectivis tempor. præd. aut aliquo eorum aliquod habuit in præmiss. ill aut eorum aliquo & hoc petit quod inquirator per patriam.

Traverse of the Tenancy in Common.

Demurrer.

Et præd. Margareta Davis als. Davison & Maria Bonner dicunt quod placitum præd. per ipsam Rebeccam Haywood modo & forma præd. superius replicando placitat. materiaq; in eod. content. minus sufficien. in lege existunt ad ipsas Margaret. & Mariam ad billam præd. ipsius Rebeccæ respondere compellend. ad quod quidem placitum

placitum ipsæ eadem Margareta & Maria necesse non habent nec p legem terræ tenentur aliquo modo respondere Et hoc parata sunt verificare Unde pro defectu sufficien. replication. ipsius Rebecca in hac parte ipsæ eadem Margareta & Maria ut prius petunt iudicium de billa præd. ipsius Rebecca Et quod billa ill. cassetur Et pro causis moration. in lege in hac parte juxta formam statuti in hujusmodi casu nuper edit. & provis. præd. Margaret & Maria Cur. hic ostend. has causas subsequent. de eo quod placitum præd. ipsius Rebecca est duplex incertum & caret forma & concludit ad patriam.

Et præd. Rebecca Haywood dicit quod placitum præd per ipsam Rebeccam modo & forma præd. superius repl. placitat. materiaq; in eodem content. bon. & sufficien. in lege exist. ad ipsas Margaret. Davis & Mariam Bonner ad billam præd. ipsius Rebecce respondere compellend' Quod quidem placit. materiamque in eodem content. eadem Rebecca parata est verificare & probare prout Cur. &c. Et quia præd. Margareta & Maria ad placitum ill. non respond. nec ill. hucusque aliquant. deduc. eadem Rebecca petit iudicium & quod præd. Margareta & Maria ad bill. præd. ipsius Rebecce ulterius respondeant, &c. Sed quia Cur. dictæ Dominæ Regine nunc hic de iudicio suo de & super præmiss. reddend. nondum advisatur dies inde datus est partibus prædictis coram Domina Regina apud Westm. usque diem Martis prox. post Octab. Sancti Martini de iudicio suo de & super præmiss. illis audiend. eo quod Cur. dictæ Dominæ Regine nunc hic inde nondum, &c.

Joinder in Demurrer.

Respondeas Ouster Agard.

Placita

*Placita coram Domina Regina apud Westm.
de Termino Sancti Michaelis Anno Reg-
ni Dominae Annae nunc Reginae Magnae
Britanniae &c. Quinto. Rotulo 439.*

Stroud *versus* Lady Gerrard. Vide fo. 8.

Middl. ff.

M

Emorandum, Quod die Mercur. prox. post
tres septiman. Sancti Michaelis isto eodem
Termino coram Dom. Regina apud Westm.
ven. Thomas Stroud per Daniel. Browne

Attorn. suum Et profert in curia dictae Dominae Reginae nunc
hic quandam billam suam versus Dominam Elizabetham Gerrard
als. Garret in Custod. Mar. &c. de placito transgression. super
casum Et sunt pleg. de prosequend. scilt. Johannes Doe & Ri-
chardus Roe quae quidem billa sequitur in hac verba ff. Middl. ff.
Thomas Stroud queritur de Domina Elizabetha Gerrard, als. Gar-
ret in Custod Mar. Marefc. Dominae Reginae coram ipsa Regina
existen. pro eo videlt. quod cum praedicta Elizabetha decimo die
Octobris Anno Regni Dominae Annae nunc Reginae Angl. &c.
quinto apud Paroch. Sancti Clementis Dacorum in Com. Middl.
praed. indebitat. fuisset eidem Thomae in quindecim libr. legalis
Monet. Angl. tam pro diversis operibus lapidarii Anglice, *Masons
Works*, per ipsum Thomam pro praefata Elizabetha ad special. in-
stant. & requisition. ipsius Elizabethae ante tunc fact. & performat.
quam pro lapide & aliis materialibus & rebus necessar. in & circa
faction. & performance. operum praed. usis & impens. per ipsum
Thomam ad similes instant. & requisition. ipsius Elizabethae invent.
& provis. Et sic inde indebitat. existen. ipsa eadem Elizabetha in
Consideratione inde super se assumpsit & eidem Thomae adtunc &
ibidem fideliter promisit quod ipsa eadem Elizabetha cum inde
postea requisit. esset praed. quindecim libr. eidem Thomae bene &
fidelit. solvere & contentare vellet Cumque etiam praed. Thomas
postea scilt. eisdem die & anno supradict. apud Paroch. praedict. in
Com. praed. ad similes instanc. & requisition. ipsius Elizabethae fe-
cisset & performasset pro praed. Elizabetha diversa alia opera lapi-
darii Anglice. *Masons Works*, & invenisset & providisset & usus fu-
isset lapides & alias material. & res necessar. in & circa faction.
& performance. operum praed. ult. mentionat. praed. Elizabetha in
conf. inde postea scilt. eisdem die & anno supradict. apud paroch.
praed.

Indebitatus
Assumpsit for
Masons Work
and Materials
found.

Quantum
meruit for
the same.

præd. in Com. præd. super se assumpsit & præfat. Thomæ adtunc & ibidem fideliter promissit quod ipsa eadem Elizabetha tam tantas denar. summas quant. idem Thomas pro præd. al. operibus lapidarii Anglice, *Masons Works*, ult. mentionat. tempore confection. & performance. eorundem rationabiliter habere meritis fuit, quam tant. denar. summas quant. præd. lapides & al. material. & res necessar. ult. mentionat. tempore invention. & provision. eorundem rationabiliter valebant eidem Thomæ cum inde postea requisit. esset bene & fideliter solvere & contentare vellet Et prædict. Thomas in facto dicit quod ipse præd. Thomas pro prædictis aliis operibus lapidarii ult. mentionat. tempore confection. & performance. eorundem rationabiliter habere meritis fuit al. quindecim libr. similis legalis monet. Angl. quodque præd. lapides & al. material. & res necessar. ult. mentionat. tempore inventionis & provisionis eorundem rationabiliter valebant al. quindecim libr. consimilis legalis monet. Angl. scilicet. apud paroch. præd. in Com. præd. unde præd. Elizabetha adtunc & ibidem notic. habuit Cumque etiam præd. Elizabetha postea scilicet. eisdem die & anno supradict. apud paroch. præd. in Com. præd. indebitat. fuisset præfat. Thomæ in al. quindecim libr. similis legalis monet. Angl. tam pro al. opere arti lapidarii spectan. Anglice, *Masons Work*, pro præd. Elizabetha per eundem Thomam ad similes special. instant. & requisition. ipsius Elizabethæ ante tempus ill. operat. & fact. ac pro diversis materialibus & rebus necessar. in & circa idem opus usitat. per præd. Thomam ad similes instant. & requisition. ipsius Elizabethæ ante tunc empt. invent. & provis. quam pro divers. denar. summis pro præd. Elizabetha per eundem Thomam ad similes instant. & requisition. ipsius Elizabethæ ante tempus ill. erogat. & extraposit. Et sic inde indebitat. existens eadem Elizabetha postea scilicet. die & anno supradict. apud Paroch. præd. in Com. præd. in consideratione inde super se assumpsit & eidem Thomæ adtunc & ibidem fideliter promissit quod ipsa eadem Elizabetha præd. ult. mentionat. quindecim libr. præfat. Thomæ cum inde postea requisit. esset bene & fideliter solvere & contentare vellet Cumque etiam præd. Elizabetha postea scilicet. eisdem die & anno supradict. apud paroch. præd. in Com. præd. in consideratione. quod prædict. Thomas ad similes special. instant. & requisition. ipsius Elizabethæ operasset & fecisset pro eadem Elizabetha al. opus arti lapidarii prædict. spectan. super se assumpsit & eidem Thomæ adtunc & ibidem fideliter promissit quod ipsa eadem Elizabetha vigint. libr. similis legalis monet. Angl. pro præd. ult. mentionat. opere per eundem Thomam pro præd. Elizabetha sic ut præfertur operat. & fact. eidem Thomæ cum inde postea requisit. esset bene & fideliter solvere & contentare vellet Prædicta tamen Elizabetha sepe-ral. promission. & assumption. suas prædict. minime curans sed machinan. & fraudulent. intendens eundem Thomam in hac parte callide & subdole decipere & defraudare prædict. sepe-ral. denar.

Indebitatus
Assumpsit
tam pro opere
lapidarii quam
pro material.

Indebit. Ass.
pro opere.

summas seu aliquem inde denar. prædict. Thomæ nondum solvit (licet ad hoc faciend. præd. Elizabetha per præfat. Thomam postea scilt. duodecimo die die Octobris Anno quinto supradict. apud Paroch. præd. in Com. præd. & sæpius postea requisit. fuit.) sed ill. ei hucusque solvere omnino contradixit & adhuc contradicit Unde idem Thomas dicit quod ipse deteriorat. est & dampnum habet ad valenc. sexagint. librarum Et inde producit sectam, &c.

Misnomer
pleaded in
Abatement.

Traverse.

Et Domina Honoria Gerard versus quam prædict. Thomas exhibuit billam suam per nomen Domine Elizabethæ Gerard als. Garret in propria persona sua venit & defend. vim & injur. &c. Et petit judic. de billa præd. quia dicit quod ipsa baptizat. fuit per nomen Honorie scilt. apud Paroch. Sancti Clementis Dacorum prædict. & per idem nomen semper a baptismatione sua hucusque cognit. & nominat. fuit Absque hoc quod ipsa eadem Honoria modo est vel unquam fuit cognit. vel nominat. per nomen Elizabethæ prout per billam præd. superius supponitur Et hoc parat. est verificare Unde petit judic. de billa prædict. Et quod billa illa cassetur, &c.

Repl.
Imparlanccs
pro Quer.

Et prædict. Thomas Stroud petit diem ad placitum præd. interloquend. Et ei conceditur, &c. Et super hoc dies inde datus est partibus prædict. coram Domina Regina apud Westm. usq; diem Jovis prox. post Octab. Sancti Hillar. videlt. præfat. Thomæ ad placitum præd. interloquend. & tunc ad replicand. &c. Ad quem diem coram Domina Regina apud Westm. ven. tam prædict. Thomas Stroud per Attorn. suum prædict. quam præd. defend. in propria persona sua Et idem Thomas petit diem ad placitum præd. ulterius interloquend. Et ei conceditur, &c. Et super hoc dies ulterius inde dat. est partibus prædict. coram Domina Regina apud Westm. usque diem Mercur. prox. post quinden. Paschæ videlicet præfat. Thomæ ad placitum præd. interloquend. & tunc ad replicand. &c. Ad quem diem coram Dom. Reg. apud Westm. ven. tam præd. Thomas Stroud per Attorn. suum præd. quam præd. defend. in propria persona sua Et idem Thomas dicit quod prædict. Domina Gerard als. Garret person. versus quam idem Thomas exhibuit billam suam præd. per nomen Domine Elizabethæ Gerard als. Garret ad placitum suum præd. in Cassation. billæ ipsius Thomæ præd. admitti non debet quia dicit quod ipsa præd. Domina Gerard als Garrett person. versus quam idem Thomas termino Sancti Michaelis ult. preterit. exhibuit billam suam præd. per nomen Domine Elizabethæ Gerard als. Garret isto eodem termino Sancti Michaelis imposuit Commune Ballium in Cur. hic ad sectam ipsius Thomæ in placito præd. per nomen Domine Elizabethæ Garrett prout per record. inde in eadem Cur. dictæ Domine Regine coram ipsa Regina apud Westm. remanen. plenius liquet & apparet Et hoc parat. est verificare per record. ill. Unde pet. judic. si prædicta Domina Gerard als. Garrett person. versus quam idem Thomas exhibuit billam suam præd. per nomen

Replication
by Way of
Estoppel, that
the Defen-
dant put in
Bail by the
Name of Eli-
zabeth.

Dominæ Elizabethæ Gerard als. Garret ad placitum suum præd. in cassation. billæ suæ prædict. contra record. prædict. admitti debeat, &c.

Et præd. Honoria Gerard versus quam prædict. Thomas exhibuit billam suam præd. per nomen Dominæ Elizabethæ Gerard als. Garret dicit quod placitum præd. per præd. Thomam modo & forma præd' superius replicando placitat. materiaque in eodem content. minns sufficien. in lege existunt ad ipsam Honoriam ad billam ipsius Thomæ præd. respondere compellend. Ad quod quidem placitum ipsa eadem Honoria necesse non habet nec per legem terræ tenetur aliquo modo respondere Et hoc parat. est verificare Unde pro defectu sufficien. replication. in hac parte ipsa eadem Honoria ut prius petit iudicium de billa præd. Et quod billa illa cassetur, &c. Demurrer.

Et præd. Thomas dicit quod placitum præd. per præd. Thomam modo & forma præd. superius replicando placitat. materiaque in eodem content. bon. & sufficien. in lege existunt ad prædict. Elizabetham ad billam præd. ipsius Thomæ inde versus præd. Elizabetham respondere compellend' Quod quidem placitum materiamque in eodem content. idem Thomas parat. est verificare & probare prout Cur. &c. Et quia præd. Elizabetha ad placitum illud non respond. nec illud hucusque aliqualit. dedicit ipse idem Thomas ut prius pet. iudicium & quod præd. Elizabetha ad billam ipsius Thomæ præd. respondere compellatur, &c. Sed quia curia dictæ Dominæ Reginæ nunc hic de iudicio suo de & super præmiss. reddend. nondum advisatur dies inde dat. est partibus prædict. coram Domina Regina apud Westm. usque diem prox. post
de iudicio suo de & super præmiss. ill. audiend. eo quod Cur. dictæ Dominæ Reginæ nunc hic inde nondum, &c. Joinder.

Placita

*Placita coram Domino Rege apud Westm.
de termino Sanctæ Trinitatis Anno Reg-
ni Domini Willi. tertii nunc Regis An-
liæ &c. decimo. Rotulo 763.*

Johnson *versus* Long. Vide fo. 10.

Somerset, ff. **M**emorandum, Quod als. scilicet termino Sancti Michaelis ult. præterit. coram Domino Rege apud Westm. ven. Timotheus Johnson per Philippum Hodges Attorn. suum & protestat in Cur. dicti Domini Regis tunc ibidem quandam billam suam versus Johannem Long in Custod. Mar. &c. de placito transgressionis super casum & sunt pleg. de prosequend. scilicet Johannes Doe & Richardus Roe quæ quidem bill. sequitur in hæc verb. ff. Somerset ff. Timotheus Johnson queritur de Johanne Long in custod. Mar. Marefc. Domini Regis nunc coram ipso Rege existen. pro eo videlt. quod cum præd. Timotheus vicesimo primo die Aprilis Anno Regni Domini Willielmi tertii nunc Regis Angl. &c. octavo & semper postea hucusque possessionat. fuit & adhuc possessionat. existit de quadam antiqua officina Anglice, a *Work-house*, situat. & existen. in Paroch. de Whatley in Com. præd. in qua quidem officina eodem vicesimo primo die Aprilis Anno octavo supradicto & a tempore cujus contrar. memoria hominum non exist. fuit quadam antiqua fenestra in occidental. parte ejusdem officinæ per quam aer saluberrimus & lumen exhilarans eodem vicesimo primo die Aprilis Anno octavo supradicto & a toto tempore supradict. intrabant & inferebantur & intrare & inferri consueverunt & solebant in magnum emolument. & commoditat. occupator. officinæ præd. Cumq; præd. Johannes vicesimo primo die Aprilis Anno octavo supradicto & semper postea hucusque possessionat. fuisset & adhuc possessionat. existit de quadam parcella terræ cum pertin. scituat. jacen. & existen. in Paroch. de Whatley præd. in Com. præd. officinæ præd. contigue adjacen. & sic inde possessionat. existen. idem Johannes machinans & fraudulenter intendens eundem Timotheum multipliciter prægravare & opprimere & ipsum Timotheum de Aere & Lumine quæ in officina præd. per fenestram prædictam intrare & inferri consuever. & solebant & officinam præd. horridis tenebris obstupare & præd. Timotheum de usu & commoditat. officinæ præd.

Declaration
for a Nuisance.

Possession al-
leged in an
old Work-
house, where-
in was a Win-
dow Time
out of Mind.

Defendant's
Possession in
a Piece of
Land adjoining
thereto.

præd. penitus deprivare præd. vicesimo primo die Aprilis Anno octavo supradicti apud Whatley præd. in Com. præd. quendam parietem super præd. parcellam terræ ipsius Johannis tam prope officinam præd. de novo erexit & ædificavit ita quod per eandem erectionem parietis præd. fenestra præd. prædicto vicesimo primo die Aprilis & semper postea usque diem exhibitionis hujus billæ scilicet vicesimum tertium diem Octobr. Anno Regni dicti Domini Regis nunc nono multipliciter obstruat. & obscurat. fuit per quod idem Timotheus totam commodat. & cassament. præd. fenestræ & juvamen & salubritat. aeris & luminis in & super eandem fenestram ut præfertur intrare & inferri consuet. & totum usum & proficuum officinæ præd. a præd. vicesimo primo die Aprilis Anno octavo supradicti usque præd. vicesimum tertium diem Octobris Anno nono supradicti. totaliter perdidit & amisit Unde idem Timotheus dicit quod ipse deterioratus est & dampnum habet ad valenc. quadragint. librarum Et inde producit sectam, &c.

Defendant
obstructed
the Light,
whereby the
Plaintiff lost
the Benefit of
his Shop.

Et modo ad hunc diem scilicet diem Veneris prox. post Crastinum Sanctæ Trin. isto eodem termino usque quem diem præd. Johannes Long habuit licenc. ad billam præd. interloquend. & tunc ad respondend. &c. coram Domino Rege apud Westm. ven. tam præd. Timotheus per Attorn. suum præd. quam præd. Johannes per Jacobum Long Attorn. suum Et præd. Johannes defendit vim & injur. quando, &c. Et dicit quod præd. Timotheus actionem suam præd. inde versus eum habere seu manutenere non debet quia dicit quod præd. Timotheus aliter scilicet termino Paschæ Anno Regni dicti Domini Regis nunc octavo in Cur. ipsius Domini Regis coram ipso Rege hic scilicet. apud Westm. in Com. Middlesex implacitasset eundem Johannem Long in quodam placito transgr. super casum narrando versus eum quod cum idem Timotheus decimo die Octobris Anno Regni Domini Regis nunc septimo & semper postea usque tunc fuisset & adtunc possessionat. existeret de quadam antiqua officina Anglice, a *Work house*, scituat. & existen. in Paroch. de Whatley in Com. præd. & quod in officina ill. eodem decimo die Octobris Anno septimo supradicti & a tempore cujus contrar. memoria hominum tunc non existeret fuisset quadam antiqua fenestr. in occidental. parte ejusdem officinæ & quod per eandem fenestram aer saluberrimus & lumen exhilarans eodem decimo die Octobris Anno septimo supradicti & a toto tempore supradicti. intrabant & inferebantur & intrare & inferri consueverunt & solebant in magnum emolument. & commoditat. occupator. officinæ præd. quodq; præd. Johannes præd. decimo die Octobris Anno septimo supradicti. & semper postea usque tunc possessionat. fuisset & adtunc possessionat. existeret de quadam parcell. terræ cum pertinentiis scituat. jacen. & existen. in Paroch. de Whatley in Com. præd. prædicti. officinæ contigue adjacent. & sic inde possessionat. existen. idem Johannes machinan. & fraudulenter intenden. eundem Timotheum multipliciter

Imparlance.

Pleas another
Action
and Recovery
for the same
Nuisance in
Bar.
Setting forth
a former De-
claration.

prægravare & opprimere & ipsum Timotheum de aere & lumine quæ in officinam præd. per fenestr. præd. inferri & intrare consuever. & solebant & officinam præd. horridis tenebris obstupare & præd. Timotheum de usu & commoditat. officinæ præd. penitus deprivare præd. decimo die Octobris Anno septimo supradict. apud Whatley præd. in Com. prædict. quendam parietem super præd. parcell. terræ ipsius Johannis tam prope officinam præd. de novo erexit & edificavit ita quod per eandem erectionem parietis præd. fenestr. præd. præd. decimo die Octobris & semper postea usq; vicesimum diem Aprilis Anno Regni Domini Regis nunc octavo multipliciter obstupat. & obscurat. fuit per quod idem Timotheus totam commoditat. & easiam. prædict. fenestr. & juvenem & salubritat. aeris & luminis in & per eandem fenestram ut præfertur intrare & inferri consuet. & totum usum & proficuum officin. præd. a præd. decimo die Octobris Anno septimo supradict. usq; præd. vicesimum diem Aprilis Anno octavo supradict. totaliter perdidit & amisit Unde idem Timotheus tunc dixit quod ipse deteriorat. fuit & dampnum habuit ad valenc. quadragint. libr. Et inde tunc produxit sectam, &c. taliterque superinde in eadem Cur. hic scilt. apud Westm. præd. postquam idem Johannes placitasset adinde ibidem quod ipse non fuit inde culpabil. & per quandam jur. patriæ inde culpabil. invent. fuisset processum fuit quod postea scilt. termino Sancti Michaelis tunc prox. sequen. per eandem Curiam hic considerat. fuit quod præd. Timotheus recuperaret versus præfat. Johannem quatuordecim libr. pro dampnis suis quæ sustin. tam occasione præmiss. in eodem Record. mentionat. quam pro misis & custag. suis per ipsum circa sectam suam in ea parte apposit. prout per record. inde in eadem curia hic scilicet apud Westm. præd. reman. plenius liquet & apparet Et idem Johannes ulterius dicit quod præd. officin. fenestr. erectio & edificatio parietis præd. in præd. recitat. record. mentionat. & præd. officin. fenestr. erectio & edificatio pariet. prædict. in billa ipsius Timothei versus ipsum Johannem Long modo exhibit. superius mentionat. & express. sunt eadem officin. fenestr. erectio & edificatio parietis & non alia neque diversa quodq; præd. Timotheus in præd. recitat. record. querens nominat. & præd. Timotheus superius in billa præd. querens nominat. sunt una & eadem persona & non alia neque diversa Et quod præd. Johannes in præd. recitat. record. defend. nominat. & præd. Johannes in billa prædict. superius defend. nominat. sunt una & eadem persona & non al. neque divers. Et hoc parat. est verificare Unde pet. judicium si præd. Timotheus actionem suam prædict. versus eum habere seu manutenere debeat, &c.

Demurrer.

Et præd. Timotheus dicit quod ipse per aliqua per præd. Johannem superius placitando allegat. ab actione sua præd. inde versus ipsum Johannem habend. præcludi non debet quia dicit quod placitum præd. per præd. Johannem modo & forma præd. superius placitat.

placitat. minus sufficien. in lege existunt ad ipsum Timotheum ab actione sua præd. inde versus præd. Johannem habend. præcludend. ad quod quidem placitum ipse idem Timotheus necesse non habet nec per legem terræ tenetur aliquo modo respondere Et hoc parat. est verificare Unde pro defectu sufficien. respons. in hac parte idem Timotheus pet. judicium & dampna sua occasione præmissorum præd. sibi adjudicari, &c.

Et præd. Johannes dicit quod placitum præd. per ipsum Johannem modo & forma præd. superius placitat. materiaq; in eodem content. bon. & sufficien. in lege existunt ad præd. Timotheum ab actione sua præd. inde versus ipsum Johannem habend. præcludend. quod quidem placitum materiamque in eodem content. ipse idem Johannes parat. est verificare & probare prout Cur', &c. Et quia præd. Timotheus ad placitum ill. non respond. nec ill. hucusque aliqualit. dedic. ipse idem Johannes ut prius pet. judic. & quod præd. Timotheus ab actione sua præd. versus ipsum Johannem habend. præcludatur, &c. Sed quia Curia dicti Domini Regis nunc hic de judic. suo de & super præmiss. reddend. nondum advisatur dies inde dat. est partibus prædictis coram Domino Rege apud Westm. usque diem Mercur. prox. post octab. Sancti Martini de judic. suo inde audiend. eo quod curia dicti Domini Regis nunc hic inde nondum, &c. Ad quem diem coram Domino Rege apud Westm. ven. partes præd. per Attorn. suos præd. super quo

Joinder.

& per Cur. Domini Regis nunc hic plenius intellectis omnibus & singulis præmissis maturaque deliberatione inde habita videtur Cur. Domini Regis hic quod placitum prædict. per præd. Johannem modo & forma præd. superius placitat. materiaque in eodem content. bon. & sufficien. in lege existunt ad ipsum Timotheum ab actione sua præd. versus præd. Johannem habend. præcludend. Ideo considerat. est quod præd. Timotheus nil capiat per billam suam præd. sed quod ipse pro falso clamore suo sit inde in Mi'a, &c. Et præd. Johannes eat inde sine die, &c. Et ulterius considerat. est quod præd. Johannes recuperet versus præfat. Timotheum sex libr. & decem solid. eidem Johanni pro Mis. & Custag. suis in & circa defension. suam in hac parte sustent. per Cur. dicti Domini Regis nunc hic ex assensu suo juxta formam statut. in hujusmodi casu edit. & provis. adjudicat. Et præd. Johannes habeat inde execution', &c.

Continuance.

Judgment pro Def.

Placita

Placita coram Domino Rege & Domina Regina apud Westm. de termino Paschæ Anno Regni Domini Willi. & Dominae Mariæ nunc Regis & Reginae Angl', &c. Secundo. Rotulo 43.

Payne versus Partridge, & al'. Vide fo. 12.

Cantabr. ff.

Memorandum, Quod als. scilt. termino Sancti Michaelis ult. præterit. coram Domino Rege & Domina Regina apud Westm. ven. Isaacus Payne per Humfridum Ambler Attorn. suum & protulit in Cur. dict. Domini Regis & Dominae Reginae tunc ibidem quandam billam suam versus Edwardum Partridge & Willielmum Boulter in Custod. Mar', &c. de placito transgressionis super casum Et sunt pleg. de prosequend. scilt. Johannes Doe & Richardus Roe quæ quidem billa sequitur in hæc verba scilt. Cantabr. ff. Isaacus Payne queritur de Edwardo Partridge Armig. & Willielmo Boulter in Custod. Mar. Marefc. Domini Regis & Dominae Reginae coram ipsis Rege & Regina existen. pro eo videlt. quod cum villa de Littleport infra insulam Ellen. in Com. præd. sit & a toto tempore cujus contrar. memoria hominum non existit fuit antiqua villa cumq; infra præd villam de Littleport præd. sit & per totum idem tempus fuit antiquus Rivus vocat. *Wilney River*, & super eundem Rivum & ex transverso ejusdem a toto tempore supradict. fuit antiquum passagium apud boreal. oriental. latus ejusdem villæ de Littleport prope finem viculi Anglice, a *Lane*, vocat. *Ferry Lane*, ducen. a villa de Littleport præd. ad eundem rivum pro transitu & transportatione subditorum hujus Regni Angliæ trans & ultra Rivum ill. transire volen. scilicet a quodam loco vocat le *Ferry Lane* ex boreal. oriental. parte ejusdem usque ad quendam locum vocat. *Adventerous Bank* ex boreal. oriental. parte ejusdem rivi ex transverso rivi ill. aut trorsum sive retorsum ad eorum libitum pro transitu & transportatione equorum equarum & spadon. suorum Qui quidem transitus & asportatio a toto tempore supradicto usque nuper scilicet primum diem Maii Anno Regni Domini Caroli secundi nuper Regis Angl', &c. decimo quinto habit. & fact. fuer. in quodam pontone Anglice, a *Ferry-Boat*, per proprietarios & occupatores passagii præd. ibidem custodit. Ac proprietarii occupatores & custod. passagii & pontonis ill. pro tempore existen. ad ill. melius custodiend. & manutend.

Declaration by an Inhabitant of Littleport against the Proprietor of a Ferry-boat, for not keeping it in repair.

Prescription in a Ferry, and Toll for Passage.

nend. a toto tempore supradict. perceper. & percipere consuever. de dictis subditis hujus Regni Angliæ trans & ultra rivum præd. scilt. a præd. loco vocat. le *Ferry-Lane* ad prædictum locum vocat. *Adventerous Bank* ex transverso rivi sit transeundum & transportand. (al. quam de inhabitantibus ejusdem villæ de Littleport in antiquis mesuagiis vel antiquis Cottagiis ibid. commorantibus) quasdam rationabiles ratas ut Tolnet. sive custum scilt. un. obolum pro quolibet equo & homine superinde equitan. ac pro quolibet & qualibet equo equa seu spadone duct. unum quadrantem ac pro quolibet & qualibet equo equa seu spadone aliter onerat. unum denar. pro hujusmodi transitu & transportatione eorum ut præfertur habend. quolibet tempore transitus sui ultra rivum præd. apud passagium præd. aut trorsum sive retrorsum Cumque etiam infra eandem villam de Littleport habeatur & a toto tempore præd. a cujus contrar. memoria hominum non existit habebatur talis antiqua consuetudo videlicet quod inhabitantes villæ ill. in antiquis Mesuagiis vel antiquis Cottagiis ibidem commoran. habuer. & habere potuer. & a toto tempore præd. habere consuever. libertatem transeundi rivum præd. apud passagium prædict. ibidem pro seipsis equis equabus & spadonibus suis in pontone prædict. sic ut præfertur transportand. aut trorsum & retrorsum ad libertatem suam sine aliqua solutione quacumq; pro hujusmodi transitu suo sic habend. Cumque etiam idem Isaacus primo die Maii Anno Regni Domini Jacobi secundi nuper Regis Angl', &c. secundo & diu antea & extunc postea hucusque fuit & adhuc existit unus inhabitan. præd. villæ de Littleport in quodam antiquo mesuagio ibidem tunc & adhuc commorans & ea de causa & ratione ipse idem Isaacus libertat. transeundi rivum præd. apud passagium præd. in pontone præd. pro seipso equis equabus & spadonibus suis in forma præd. sine aliqua solutione quacumque pro inde faciend. virtute dictæ consuetud. habere debuit & debet præd. tamen Edvardus & Willielmus præmissor. non ignari sed machinam. & malitiose intenden. ipsum Isaacum minus rite prægravare & magnopere dampnificare & de libertat. transitus sui præd. trans rivum præd. apud passagium præd. in pontone præd. ut præfertur habend. deprivare necnon eundem Isaacum ill. penitus amittere causare præd. primo die Maii Anno secundo supradict. & abinde usque diem exhibition. billæ præd. ipsius Isaaci (eisdem Edvar-do & Willielmo adtunc ac antea ac postea hucusque proprietar. occupator. & custod. passag. & ponton. præd. existen.) nullum pontonem apud passagium præd. pro transitu subditorum hujus Regni ac equorum equarum & spadon. præd. trans & ultra rivum ill. transire volen. habuer. servaver. sive custodiver. sed ill. facere habere servare vel custodire per tempus præd. totalit. omiser. & neglexer. ac null. ponto ibidem per tempus præd. aut aliquam partem temporis ill. ibidem fuit vel adhuc existit licet iidem Edvardus & Willielmus præd. primo die Maii Anno secundo supradicto &

Voll. II.

T t

sapius

Exception of
Inhabitants
in ancient
Mesuages
from paying
Toll.

The several
Tolls taken.

Prescription
of Exemption
for the Inha-
bitants in the
ancient Mes-
suages or Cor-
tages, for free
Passage.

That the
Plaintiff is
an Inhabitant
in ancient
Mesuage.

Breach in not
keeping the
Boat.

ſæpius poſtea apud Littleport præd. huiusmodi ponton. ad paſſagium præd. habere & permittere ipſum Iſaacum libertat. præd. ibidem habere per eundem Iſaacum requiſit. fuiſſent ſic quod idem Iſaacus de libertat. ſua tranſeundi rivum prædict. apud paſſagium præd. in forma præd. juxta conſuetud. præd. habend. a prædicto primo die Maii Anno ſecundo ſupradicto & extunc huculue fuit & adhuc eſt impedit. & penitus deprivat. contra conſuetud. præd. ad dampnum ipſius Iſaaci quingentarum librarum & inde producit ſectam, &c.

Imparlane.

Et modo ad hunc diem ſcilt. diem Mercur. prox. poſt quinden. Paſchæ iſto eodem termino uſq; quem diem prædict. Edvardus & Willielmus habuer. licenc. ad billam præd. interloquend. & tunc ad reſpondend', &c. coram Domino Rege & Domina Regina apud Weſtm. ven tam prædict. Iſaacus per Attorn. ſuum prædict. quam prædict. Edvardus & Willielmus per Joſephum Sherwood Attorn. ſuum & præd. Edvardus & Willielmus defend. vim & injur. quando, &c. & dicunt quod prædict. Iſaacus actionem ſuam præd. inde verſus eos habere ſeu manutenere non debet Quia proteſtando

Proteſtando;
that the Paſ-
ſage was not
in a Boat.

quod tranſit. & portatio perſonar. equorum equarum & ſpadon. trans & ultra rivum præd. non habit. ſeu fact. fuer. in aliquo pontone Anglice, a *Ferry-Boat*, cuſtodit. pro tranſitu & transportatione perſonarum ſeu averiorum in loco ubi ac modo & forma prout per Narration. præd. ſuperius ſupponitur Proteſtandoque quod infra præd. vill. de Littleport non eſt nec unquam fuit aliqua talis conſuetud. qual. in narration. præd. ſuperius ſupponitur & allegatur Proteſtando etiam quod præd. Iſaacus non eſt nec unquam fuit unus Inhabitant. præd. vill. de Littleport in aliquo antiquo meſuagio ibidem commorans modo & forma prout per narration. præd. ſuperius ſupponitur pro placito iidem Edvardus & Willielmus dicunt quod diu antea præd. tempus in quo, &c. ſcilt. primo die Maii Anno Regni dicti nuper Regis Caroli ſecundi decimo quinto ſupradicto ipſe idem Edvardus ad onera & cuſtag. ipſius Edvardi propr. erexit ædificavit & locavit in & ſuper rivum præd. & ex tranſverſo eiſdem rivi apud paſſagium præd' quendam pontem ex ligno & lapidibus conſect. pro uſu eaſiamen. tranſitu & transportation. omn. & ſingularum perſonarum equorum equarum & ſpadon. ibidem venien. ac trans & ultra rivum ill. apud paſſagium præd. tranſire volen. quem quidem pontem ſic ibidem erect. & locat. idem Edvardus ibidem de tempore in tempus & ad omnia tempora poſt conſection. inde huculq; bene & ſufficient. habuit ſervavit & manutenuit reparavit & cuſtodivit & adhuc ibidem habet ſervat manutenet & cuſtodit ita quod idem Iſaacus & omnes & ſingulæ perſonæ equi equæ & ſpadon. ibidem venien. ac trans & ultra rivum præd. apud paſſagium præd. tranſire volen. in p & ſupra pontem prædict. trans & ultra rivum præd. abſq; aliquo periculo apud paſſagium præd. tutius melius & celerius quam in pontone Anglice, a *Ferry-Boat*, ibidem ire redire &

Proteſtandoq;
no ſuch Cu-
ſtom.

Proteſtando
etiam, that
the Plaintiff
was not an
Inhabitant in
any old Meſ-
ſuage.

Plea that at
their own
Charge they
built a Bridge
in lieu of the
Boat, and
keep it in re-
pair, more ſafe
for Paſſage
than the Boat.

transire de tempore in tempus & ad omnia tempora post confessionem. & locationem pontis præd. ibidem hucusque potuer. & adhuc possunt Per quod iidem Edvardus & Willielmus nullum pontonem apud passagium præd. habuer. servaver. seu custodiver. sed ill. facere habere servare vel custodire omiser. & neglexer. prout eis ex causa præd. bene licuit Et hoc parat. sunt verificare Unde petunt judic. si præd. Isaacus actionem suam præd. inde versus eos habere seu manutenere debeat, &c.

For which Reason they omitted to keep the Boat.

Et præd. Isaacus dic. quod ipse per aliqua per præd. Edvardum & Willielmum superius allegat. ab actione sua præd. inde versus ipsos habend. præcludi non debet quia dicit quod idem Isaacus per aliquem pontem libertat. passagii præd. trans & ultra rivum præd. secundum consuetud. in nar. præd. mentionat. habere non permissus fuit contra consuetud. præd. Et hoc parat. est verificare Unde petit judic. & dampna sua occasione præmissorum sibi adjudicari, &c.

Reply, That he was not permitted to pass over any Bridge.

Et præd. Edvardus & Willielmus dicunt quod placitum præd. per præd. Isaacum modo & forma præd. superius replicando placitat. materiaque in eodem content. minus sufficien. in lege existunt ad actionem ipsos Isaaci præd. versus ipsos Edvardum & Willielmum habend. manutenend. ad quod iidem Edvardus & Willielmus necesse non habent nec per legem terræ tenentur aliquo modo respondere Et hoc parat. sunt verificare Unde pro defectu sufficien. replication. in hac parte iidem Edvardus & Willielmus ut prius petunt iudicium Et quod præd. Isaacus ab actione sua præd. versus ipsos Edvardum & Willielmum habend. præcludatur, &c.

Demurrer.

Et præd. Isaacus dicit quod placitum præd. per eundem Isaacum modo & forma præd. superius replicando placitat. materiaq; in eodem content. bon. & sufficien. in lege existunt ad actionem ipsius Isaaci versus eosdem Edvardum & Willielmum habend. manutenend. quod quidem placitum materiamq; in eodem content. idem Isaacus parat. est verificare & probare prout Cur. &c. Et quia prædict. Edvardus & Willielmus ad placitum ill. non respond. nec ill. hucusque aliquant. deducunt idem Isaacus ut prius petit judic. & dampna sua occasione præmiss. sibi adjudicari, &c. Sed quia Cur. dicti Domini Regis & dictæ Domine Regine nunc hic de iudicio suo de & super præmiss. reddend nondum advisatur dies inde dat. est partibus prædict. coram Domino Rege & Domina Regina apud Westm. usq; diem Veneris prox. post crastinum Sanctæ Trinitat. de judic. suo de & super præmiss. ill. audiend. eo quod Cur. dict. Domini Regis & Domine Regine nunc hic inde nondum, &c. Ad quem diem coram Domino Rege & Domina Regina apud Westm. ven. partes præd. per Attorn. suos præd. Sed quia Cur. Domini Regis & Domine Regine de judic. suo de & super præmiss. reddend. nondum advisatur dies inde dat. est partibus præd. coram Domino Rege & Domina Regina apud Westm. usq; diem Jovis prox.

Joinder.

Continuances.

px. post tres septiman. Sancti Michaelis de judic. suo inde audiend. eo quod Cur. dicti Domini Regis & Domina Regina nunc hic inde nondum, &c. Ad quem diem coram Domino Rege & Domina Regina apud Westm. ven. partes præd. per Attorn. suos præd. Sed quia Cur. dicti Domini Regis & Domina Regina nunc hic de judic. suo de & super præmissis reddend. nondum advisatur dies inde dat. est partibus prædictis coram Domino Rege & Domina Regina apud Westm. usq; diem Veneris px. post Octab. Sancti Hillar. de judic. suo inde audiend. eo quod Cur. dicti Domini Regis & Domina Regina nunc hic inde nondum, &c. Ad quem diem coram Domino Rege & Domina Regina apud Westm. ven. partes prædict. p. Attorn. suos prædict. Sed quia Cur. dicti Domini Regis & Domina Regina nunc hic de judic. suo de & super præmissis reddend. nondum advisatur dies inde dat. est partibus prædictis coram Domino Rege & Domina Regina apud Westm. usque diem Mercur. prox. post quinden. Paschæ de judic. suo inde audiend. eo quod Cur. dicti Domini Regis & Domina Regina nunc hic inde nondum, &c. Ad quem diem coram Domino Rege & Domina Regina apud Westm. venerunt partes præd. per Attorn. suos prædict. Sed quia curia dicti Domini Regis & Domina Regina nunc hic de judicio suo de & super præmissis reddend. nondum advisatur dies inde datus est partibus prædictis coram Domino Rege & Domina Regina apud Westmonastetium usque diem Sabbati prox. post Octab. Sanctæ Trinitat. de judicio suo inde audiend. eo quod Cur. dictorum Domini Regis & Domina Regina nunc hic inde nondum, &c. Ad quem diem coram Domino Rege & Domina Regina apud Westm. ven. partes prædict. p. Attorn. suos præd. Super quo vil. & per Cur. dicti Domini Regis & Domina Regina nunc hic plenius intellectis omnibus & singulis præmissis maturaq; deliberatione inde habita videtur Cur. dicti Domini Regis & Domina Regina nunc hic quod placitum præd. per præd. Isaacum modo & forma præd. superius replicando placitat. materiaq; in eodem content. minus sufficiens. in lege exist. ad action. ipsius Isaaci præd. versus præd. Edvardum & Willielmum habend. manutenend. Ideo considerat. est quod præd. Isaacus nil capiat per billam suam præd. Sed pro falso clamore suo sit inde in Misericordia &c. Et præd. Edvardus & Willielmus eant inde sine die, &c.

Judic. pro
Def.

*Placita coram Domino Rege apud Westm.
de termino Sancti Hillarii Anno Regni
Domini Willi. tertii nunc Regis Angliæ,
&c. septimo. Rotulo 697.*

Hicks versus Downing. Vide fo. 13.

Somerſet, ſſ.

Memorandum, Quod als. ſcilt. termino Sancti Michaelis ultimo præterito coram Domino Rege apud Westm. venit Sara Hicks vid. per Thomam Callow Attorn. suum & protulit in Cur. dicti Domini Regis tunc ibidem quandam billam suam versus Johannem Downing in Custod. Mar', &c. de placito transgr. super casum Et sunt pleg. de prosequend. scilt. Johannes Doe & Richardus Roe Quæ quidem billa sequitur in hæc verba ſſ. Somerſet ſſ. Sara Hicks vidua queritur de Johanne Downing in Custod. Mar. Mareſc. Domini Regis coram ipſo Rege existen. pro eo videlicet quod cum præfat. Sara vicesimo sexto die Januarii Anno Domini Milleſimo ſexcentefimo nonageſimo ſecundo legitime poſſeſſionat. fuit de & in quodam Meſſuagio ſcituat. jacen. & existen' in Eaſt Dundry in Com. præd. pro quodam termino Annorum ad tunc & adhuc ventur. & inexpirat. Et ſic inde poſſeſſionat. existen. eadem Sara eiſdem die & anno ſupradictis apud Eaſt Dundry præd. dimiſit Meſſuagium præd. (inter alia) præfat. Johanni Downing habend. & tenend. eidem Johanni Downing a vicesimo quinto die Martii tunc prox. ſequen. pro termino trium Annorum ſi præd. Sara Hicks & Johannes Downing & quidam Thomas Downing & Editha Pater & Mater ipſius Johannis Downing tam diu viverent Virtute cujus quidem dimiſſion. præfat. Johannes Downing poſtea ſcilicet vicesimo ſexto die Martii Anno Domini Milleſimo ſexcentefimo nonageſimo tertio in Meſſuagium præd. intravit & inde (inter alia) poſſeſſionat. fuit pro dicto termino trium Annorum ſuperius ſibi dimiſſ. reverſione inde eidem Saræ pro reſid. dicti termini ſuperius primo mentionat. ſpectan. Ac eadem Sara in facto dicit quod tam præfat. Thomas Downing & Editha quam præd. Johannes Downing adhuc ſuperſtites & in plena vita exiſtunt ſcilicet apud Eaſt Dundry præd. prædictus tamen Johannes Downing præmiſſa ſatis ſcien. ſed. machinan. & malitioſe inten- den. ipſam Saram in hac parte multiplici. dampnificare & prægrava- vare ſedem Johannes Downing vicesimo die Junii Anno Domini

*Declaration
That ſhe was
lawfully poſ-
ſeſſ'd of a
Meſſuage for
a Term of
Years, and
demiſed it for
three Years to
the Defen-
dant, if ſuch
Perſons
ſhould ſo
long live.*

*Defendant's
Entry and
Poſſeſſion for
his Term, the
Reverſion be-
longing to
the Plaintiff.
Averment of
Lives.*

*Breach in
negligent
keeping his
Fire.*

Millesimo sexcentesimo nonagesimo quinto (existen. de Mesuag. su. pradi& sic ut præfertur possessionat. reversione inde eidem Sara in forma præd. spectan.) ignem suum in Mesuagio præd. tam negligent. & improvide custodivit quod ratione inde Messuagium ill. adtunc combust. fuit & totalit. ruinat. existit unde eadem Sara dicit quod deteriorat. est & dampnum habet ad Valentiam quingent. librarum Et inde producit sectam, &c.

Imparlance.

Et modo ad hunc diem scilt. diem Jovis prox. post Octabas Sancti Hillarii isto eodem termino usque quem diem præd. Johannes habuit licenciam ad billam præd. interloquendi & tunc ad respondend', &c. coram Domino Rege apud Westm. venit tam præd. Sara per Attorn. suum præd. quam præd. Johannes per Samuelem Brewster Attorn. suum Et idem Johannes Downing defendit vim & injur. quando, &c. Et dicit quod ipse non est inde culpabilis Et de hoc pon. se super patriam Et prædicta Sara similiter, &c. Ideo ven. inde Jur. coram Domino Rege apud Westm. die Mercur. prox post octabas Purification. beatæ Mariæ Et qui nec, &c. ad recogn', &c. quia tam, &c. Idem dies dat. est partibus prædictis ibidem, &c.

Non cul.

*Placita coram Domino Rege apud Westm.
de termino Sanctæ Trinitatis Anno Regni Domini Willi. tertii nunc Regis Angliæ, &c. nono. Rotulo 359.*

Turbervil versus Stamp. Vide fo. 13.

Dorset, ff.

Memorandum, Quod als scilicet termino Pasche ult. præterit coram Domino Rege apud Westm. ven. Thomas Turbervile jun. Ar. per Edvardum Lawrence Attorn. suum & protulit in Cur. dicti Domini Regis tunc ibidem quandam billam suam versus Johannem Stampe Gen. in Custod. Mar', &c. de placito transgr. super casum Et sunt pleg. de prosequend. scilicet Johannes Doe & Richardus Roe quæ quidem billa sequitur in hæc verba ff. Dorset ff. Thomas Turbervile jun. Ar. queritur de Jo-

hanne

hanne Stampe Gen. in Custod. Mar. Marefc. Domini Regis coram
 ipsa Rege existen. pro eo videlicet quod cum secundum legem &
 consuetud. hujus Regni Angl. haftenus usitat. & approbat. quilibet
 homo ejusdem Regni ignem suum die & nocte salvo & secure cu-
 stodire teneatur ne pro defectu debit. Custod. ignis hujusmodi
 dampnum aliquod alicui de eodem Regno even. ullo modo Cumq;
 præd. Thomas sexto die Aprilis Anno Regni Domini Gulielmi ter-
 tii nunc Regis Angl. &c. nono possessionat. fuit de quodam clauso
 brueræ jacen & existen. in Paroch. de Stoke in Com. prædict.
 Cumque etiam præd. Johannes die & anno supradictis similiter pos-
 sessionat. fuit de quodam al. clauso brueræ prox. adjungen. præd.
 clauso brueræ ipsius Thomæ in Paroch. & Com. præd. præd. Jo-
 hannes die anno & loco supradictis tam negligenter & improvide
 custodivit ignem suum in præd. clauso brueræ ipsius Johannis
 præd. quod pro defectu debit. custod. ignis præd. brueræ & Jampnæ
 Anglice, *Heath and Furzes*, ipsius Thomæ ad valenc. quadragint.
 librarum in præd. clauso brueræ ipsius Thomæ tunc crescen. & ex-
 isten. combust. fuer. ad grave dampnum ipsius Thomæ & contra
 consuetud. præd. unde dicit quod deteriorat. est & dampnum ha-
 bet ad valenc. quadragint. librar. Et inde producit sectam, &c.
 Et modo ad hunc diem scilicet diem Veneris prox. post crastinum
 Sanctæ Trin. isto eodem termino usque quem diem præd. Johannes
 habuit licenc. ad billam præd. interloquend. & tunc ad respondend.
 &c. coram Domino Rege apud Westm. ven. tam præd. Thomas
 per Attorn. suum præd. quam præd. Johannes per Samuel Brew-
 ster Attorn. suum Et idem Johannes defend. vim & injuri. quandoq;
 &c. & dicit quod ipse non est inde culpabilis & de hoc ponit se
 super patriam & præd. Thomas similiter, &c. Ideo ven. inde Jur.
 coram Domino Rege apud Westm. die prox. post
 Et qui nec, &c. ad recogn', &c. quia tam, &c. idem dies dat. est
 partibus præd. ibidem, &c. Postea continuat. inde process. inter
 partes præd. de placito præd. per jurat. posit. inde inter eas in re-
 spect. coram Domino Rege apud Westm. usq; diem Sabbati prox.
 post tres septiman. Sancti Michaelis Nisi justic Domini Regis ad
 Assisas in Com. Dorf. capiend. assign. prius die Jovis vicesimo se-
 cundo die Julii apud Dorchester in Com. præd. per formam statut.
 &c. ven. pro defectu Jur', &c. Ad quem diem coram Domino Rege
 apud Westmonasterium ven. præd. Thomas Turberville jun. per
 Attorn. suum præd. & præfat. Justic. coram quibus, &c. miser.
 hic record. suum coram eis habitum in hæc verba s. Postea die & loco
 infracontent. coram Edvardo Ward Mil. Capital. Baron. Scaccarii
 Domini Regis & Thoma Rokeby Mil. un justic. Domini
 Regis ad placita coram ipso Rege tenend. assign. justic. ejusdem
 Domini Regis ad Assisas in Com. Dorf. capiend. assign. per for-
 mam statut', &c. ven. infranominat. Thomas Turberville junior
 Armig. per Attorn. suum infracontent. & infra script Johannes
 Stampe Gen. licet solempniter exact. non ven. sed default fec. Ideo

Declaration
 upon the Cu-
 stom of the
 Realm for
 negligent
 keeping a Fire
 in the Defen-
 dant's Close,
 whereby the
 Defendant's
 Corn was
 burnt.

orig. filius V
 1209

manuscript

sh. argum. G
 0101010101

Non cul. and
 Issue.

Venire
 awarded.

Nisi prius.

Postea and
 Verdict.

Defendant's
 Default.

jurat. unde fit mentio capiatur versus eum per default' Et jur. jurata ill. exact. quidam eorum videlicet Thomas Notting, Henricus Kelloway, Richardus Hombourne, Johannes Ford, David Haward Marcus Dowland, Henricus Humber, Jacobus Squibb, Robertus Woolfrays, vener. & in jur. ill. jurat. existunt Et quia resid. jur. ejusdem jurate non comperuer. Ideo al. de circumstantibus per Vic. Com. præd. ad hoc elect. ad requisition. præd. Thomæ Turberville ac per mandat. justic. præd. de novo apponuntur Quorum nomina in pannello infrascript. affilantur secundum formam statuti. in hujusmodi casu nuper edit. & provis. Ac jur. de novo apposit. videlicet Johannes Warren, Willielmus Bussel & Nathaniel Payne, exact. similiter vener. qui ad veritatem de infracontent. simul cum al. jur. præd. prius ad hoc impannellat. & jurat. dicend. elect. triat. & jurat. dicunt super sacramentum suum quod præd. Johannes Stampe est culpabilis de præmissis infrascript. interius ei imposit. prout præd. Thomas Turberville interius inde versus eum queritur & assidunt dampna ipsius Thomæ occasione infrascript. ultra mis. & custag. sua per ipsum circa sectam suam in hac parte apposit. ad octodecim libr. & pro misis & custag. ill. ad quadragint. solid. Ideo consider. est quod præd. Thomas Turberville recuperet versus præfat. Johannem Stampe dampna sua præd. per jur. prædict. in forma præd. assess. necnon undecim libras pro misis & custag. suis eidem Thomæ Turberville per Car. dicti Domini Regis nunc hic ex assensu suo de incremento adjudicat. quæ quidem dampna in toto se attingunt ad trigint. unam libras Et præd. Johannes in Misericordia, &c.

Verdict pro
Quer.

Judgment

Damages de
incremento

Placita

*Placita coram Domino Rege apud Westm.
de termino Sancte Trinitatis Anno Reg-
ni Domini Willielmi tertii nunc Regis
Angl. &c. decimo. Rotulo 162.*

Robins. versus Robins. Vide fo. 15.

Cornub. ff.

Memorandum, Quod als. scilicet termino Pasche
ultimo preterito coram Domino Rege apud
Westm. venit Stephanus Robyns gen. per
Edvardum Hoblyn Attorn. suum Et pro-

tulit in Cur. dicti Domini Regis tunc ibidem quandam billam
suam versus Johannem Robyns gen. in Custod. Mar', &c. de placi-
to debiti Et sunt pleg. de prosequend. scilicet Johannes Doe & Ri-
chardus Roe Quæ quidem billa sequitur in hac verba ff. Cornub.
ff. Stephanus Robyns gen. queritur de Johanne Robyns gen. in
Custod. Mar. Marefc. Domini Regis coram ipso Rege existen. pro
eo videlt. quod cum præd. Johannes nunquam habuisset aliquam
legalem causam actionis versus eundem Stephanum ita quod per
legem hujus Regni Angl. corpus ipsius Stephani proinde capi & in
Prisona quousque idem Stephanus sufficien. mancaptores ad re-
spondend. eidem Johanni in eadem causa inveniret detineri de-
beret præd. tamen Johannes præmissa satis scien. sed machinan. &
malitiose intenden. ipsum Stephanum in hac parte minus rite præ-
gravare opprimere & dampnificare & credentiam & reputation.
suas quantum in ipso fuit peiorare & detrahere idem Johannes vi-
cesimo octavo die Maii Anno Regni Domini Willielmi tertii nunc
Regis Angliæ, &c. nono apud Bodmyn in Com. præd. eundem
Stephanum prætextu & colore cujusdam medii processus in lege
arrestari causavit ac licet ipse præd. Stephanus semper parat. fuit
ad comparend. super tali processu ad diem retorn. inde ad re-
spond. eidem Johanni juxta exigenciam ejusdem processus dictus
tamen Johannes eundem Stephanum die & anno supradict. apud
Bodmyn præd. imprisonari & ibidem in Prisona per spacium sex
Mensium pro eo tantum quod præd. Stephanus sufficien. mancap-
tor. ad respondend. eidem Johanni super process. præd. invenire
non potuisset detineri malitiose procuravit & causavit per quod præd.
Stephan. grandes denar. sum. pro sustentatione sua in prisona præd.
expendere coact. fuit Ac negotia ipsius Stephani necessar. per tempus
ill. infecta remanserunt ac idem Stephanus in modo suo vivendi

Case for ar-
resting a Man
by Colour of
Process, and
holding him
to Bail, where
none was re-
quired by
Law, after
tendering a
common Ap-
pearance.

magnopere deteriorat. fuit in magnam animi sui perturbation. & fame & credentia suarum lationem manifestam Unde præd. Stephanus dicit quod ipse deterioratus est & dampnum habet ad valentiam centum & quinquaginta librarum. Et inde producti scilicet &c.

Not guilty
pleaded.

Et modo ad hunc diem scilicet diem Veniens prox. post crastinum Sancte Trinitatis isti eodem termino usque quousque præd. Stephanus habuit licentiam ad billam præd. interloquendi & tunc ad respondend. &c. coram Domino Rege apud Westm. ven. tam præd. Stephanus per Attorn. suum præd. quam præd. Johannes per Josephum Sherwood Attorn. suum & præd. Johannes defend. vim & injur. quando, &c. & dicit quod ipse non est inde culpabil. & de hoc pon. se super Patriam. Et præd. Stephanus inde similiter Ideo ven. inde jur. coram Domino Rege apud Westm. die Mercur. prox. post tres septimanas Sancte Trinitatis. Et qui nec, &c. ad recogn. &c. quia tam, &c. Idem dies datus est partibus prædictis ibidem, &c.

*Placita coram Domino Rege apud Westm.
de termino Sancti Hillarii Anno Regni
Domini Willielmi tertii nunc Regis An-
gl. &c. nono. Rotulo 437.*

Iveson versus Moore. Vide fo. 15.

Memorandum. Quod als. scilicet termino Sancti Michaelis ult. præteritis coram Domino Rege apud Westm. ven. Henricus Iveson per Edmundum Barker Attorn. suum. Et protulit in Cur. dicti Domini Regis tunc ibidem quamdam billam suam versus Johannem Moore Armigerum & Rutham uxorem ejus Samuellem Bright, Jeremiam Lobleij, Henricum Smith & Petrum Blakeley in Custod. Mar. &c. de placito transgr. super eadem. Et sunt pleg. de prosequend. scilicet Johannes Doe & Richardus Roe. Quæ quidem billa sequitur in hæc verba s. Ebor. s. Henricus Iveson queritur de Johanne Moore Ar. & Rutha Ux. ejus Samuel Wright,

Wright, Jeremia Lohley, Henrico Smith & Petrus Blakely in Curia
 flos. Mar. Marefc. Domini Regis coram ipso Rege exhibet pro eo
 videlicet quod cum præd. Henricus Iveson decimo quarto die Maii
 Anno Regni Domini Willielmi tertii tunc Regis Angli & Canono
 & diu antea & semper postea huiusmodi possessionat. fuit se adhuc
 possessionat. existit pro quodam termino Annorum ad huc & ad
 huc ventur. & inexistit. de & in quodam carbonario (Anglice
 Colliery) & miner. carbon. existit. subter solam & terram & in
 visceribus cuiusdam clausi sive parcellæ terre sitæ in paroch. in
 Paroch. de Whitkirk alias Whitchurch in Com. præd. vocat.
 Whitkirk alias Whitchurch sive & prope adjacent. continui alias
 viz. Regia in Paroch. præd. dices. ex boreali parti a villa de
 Wiskeby in Com. præd. in per & trans quendam viciniam ibidem
 vocat. Minner & abinde in per & trans quendam viciniam ibidem
 vocat. Alishen Lane & abinde in per & trans villam de Whitkirk
 alias Whitchurch præd. & sic iterum per modum de & in quodam
 al. carbonar. & miner. carbon. existit. subter solam & terra
 ram & in visceribus cuiusdam clausi sive parcellæ terre in Pa
 rochiæ præd. vocat. Hulton Moor scilicet. & in per & trans prope
 adjacent. continui alias viz. Regia præd. dices. ex boreali parti
 a villa de Wiskeby præd. in per & trans præd. viciniam
 more & abinde in per & trans viciniam præd. vocat. Alishen Lane
 & abinde in per & trans villam de Hulton in Com. præd. & sic
 retrorsum in per & trans quam quidem viciniam vocat. Alishen
 Lane Carbones è miner. præd. acquisit. & effossi a clausis præd. ad
 loca vicina & circumjacent. cariar. & conveyar. pro re nata so
 lit. fuer. & intendebantur Cumque etiam eodem decimo quarto
 die Maii præd. Henricus Iveson magnam quantitatem videlicet. ducent.
 carebat. carbon. è miner. præd. effos. in clausis præd. separal
 venditioni expon. parat. habuit prædicti Johannes, Rutha, Samuel,
 Jeremia, Henricus Smith & Petrus præmissorum non ignari sed
 machinan. & fraudulent. & malitiose intenden. eundem Henricum
 Iveson de usu & beneficio carbonar. suarum præd. impedire deci
 pere & defraudare & emptor. carbon. extra carbonar. præd. effos. è
 carbonar. præd. alienar. & seducere ipsosque ad carbonar. prædict.
 Johannis Moore prope adjacent. in Paroch. præd. appropriar. &
 procurare postea scilicet. præd. decimo quarto die Maii Anno Regni
 dicti Domini Regis nunc nono supradicto quatuor carebat. mag
 nor. lapidum & unam radicem magni Fraxini in via præd. in ve
 nella præd. apud Paroch. præd. posuer. & locaver. & lapides & ra
 dicem Fraxini præd. ibidem remanere per spacium unius Mensis
 permisserunt & continnaverunt per quæ quidem lapides & radi
 cem Fraxini præd. via præd. in per & trans viciniam præd. in
 tant. obstruat. & obstruat. fuit quod caruæ & carriagia pro car
 riation. & asportation. carbon. è carbonar. & miner. præd. ac
 quisit. & effos. in per & trans viam præd. per viciniam præd.
 transir.

Datatione
 setting forth
 that he was
 possessor of a
 certain Term
 of Years in a
 Colliery ad
 joining to the
 Highway.

Inc. non
 .boreali

And had
 great Quan
 tities of Coals
 dug ready
 for Sale

But the De
 fendants ma
 liciously in
 tending to
 hinder Buy
 ers, stop'd up
 the Way.

*Placita coram Domino Rege apud Westm.
de termino Sancti Michaelis Anno Reg-
ni Domini Willielmi tertii nunc Regis
Angliæ, &c. decimo. Rotulo, 125.*

Butcher *versus* Andrews. Vide fo. 23.

Essex, ff.

Memorandum, Quod als. scilicet termino Paschæ ultimo præterito coram Domino Rege apud Westm. ven. Thomas Butcher per Radolphum Cole Attorn. suam Et protulit in Cur. dicti Domini Regis tunc ibidem quandam billam suam versus Jacobum Andrews in Custod. Mar. &c. de placito transgr. super casum Et sunt pleg. de prosequend. scilicet Johannes Doe & Richardus Roe Quæ quidem billa sequitur in hæc verba scilicet Essex ff. Thomas Butcher queritur de Jacobo Andrews in Custod. Mar. Marefc. Domini Regis coram ipso Rege existens pro eo videlicet quod cum præd. Jacobus primo die Augusti Anno Regni Domini Willielmi tertii nunc Regis Angliæ, &c. octavo apud Gestingthorpe in Com. præd. in consideration. quod idem Thomas Butcher ad special. instanc. & requisition. ipsius Jacobi mutuo daret & accommodaret cuidam Georgio Andrews filio ipsius Jacobi Andrews aliquam vel aliquas denar. summas & venderet & deliberaret eidem Georgio tal. bon. mercimon. & merchandiz. qual. ipse idem Georgius careret & requireret & fiduciaret, Anglice *Would Trust*, eidem Georgio pro eisdem ita quod præd. denar. summa. sic ut præfertur fore accomodand. & valer. præd. bonorum mercimon. & merchandiz. eidem Georgio Andrews per præd. Thomam Butcher deliberand. & vendend. in toto non excederent summam quinque librarum legalis monete Angliæ super se Assumpsit & eidem Thomæ Butcher adtunc & ibidem fidelit. promissit quod ipse præd. Jacobus non solum omnes tal. denar. summas sed per ipsum Thomam Butcher eidem Georgio Andrews mutuo daret & accommodand. verum etiam omnes tal. denar. summas quam bon. mercimon. & merchandiz. præd. tempore vendition. & deliberation. eorundem rationabilit. valerent eidem Thomæ Butcher cum inde postea requisit. esset bene & fidelit. solvere & contentare vellet Et idem Thomas Butcher in facto dicit quod ipse idem Thomas Butcher postea scit. eodem primo die Augusti Anno octavo supradicto apud Gestingthorpe præd. in Com. præd. ad præd. special.

Declares in Consideration if he would lend the Defendant's Son, a Sum not exceeding 5 l. or trust him for Goods to that Value, he would pay.

Averment.

Indeb. Ac.
sump. for s l.
lent the Son at
the Plaintiff's
Request.

Indeb. Ac.
sump. for o-
ther s l. laid
out, &c.

cial. instanc. ipsius Jacobi mutuo dedit & accommodavit eidem Georgio Andrews summam trigint. solld. legalis monet. Angl. ac eisdem die Anno & loco ultim. supradict. ad præd. special. instanc. & requisition. ipsius Jacobi vendidit & deliberavit eidem Georgio Andrews diversa bon. mercimon. & merchandiz. & fiduciavit præd. Georgio pro eisdem Quodque bon. mercimon. & merchandiz. præd. tempore vendition. & deliberation. eorundem rationabiliter valebant summam trium librarum & decem solidorum similis legalis monetæ Angliæ videlicet apud Gestingthorpe præd. in Com. præd. Unde præd. Jacobus postea scilicet eodem primo die Augusti Anno octavo supradicto apud Gestingthorpe præd. in Com' præd' notitiam per eundem Thomam Butcher adtunc & ibidem habuit Cumque etiam præd. Jacobus postea scilicet eodem primo die Augusti Anno octavo supradicto apud Gestingthorpe præd. in Com. præd. indebitat. fuisset eidem Thomæ Butcher in quinque libris similis legalis monet. Angl. pro tant. denar. summa ipsius Thomæ Butcher per præfat. Thomam Butcher ad similes special. instanc' & requisition. ipsius Jacobi eidem Georgio Andrews ante tempus illud mutuo dat. & accommodat. ac etiam indebitat. fuit eidem Thomæ Butcher in al. quinque libris similis legalis monetæ Angliæ pro diversis bon. mercimon. & merchandiz. per præfat. Thomam Butcher eidem Georgio Andrews ad similes special. instanc. & requisition. ipsius Jacobi ante tempus illud vendit. & deliberat. ipsoque Jacobo eidem Thomæ Butcher sic inde indebitat. existens. ipse præd. Jacobus in consideration. inde postea scilicet eodem primo die Augusti Anno octavo supradicto apud Gestingthorpe præd. in Com' præd. super se Assumpsit & eidem Thomæ Butcher adtunc & ibidem similiter fideliter promisit quod ipse præd. Jacobus præd. sepal. summas quinque libr. & quinque librar. ult. mentionat. eidem Thomæ Butcher cum inde postea requisit. esset bene & fideliter solvere & contentare vellet Cumque etiam præd. Jacobus postea scilicet eodem primo die Augusti Anno octavo supradicto apud Gestingthorpe præd. in Com. præd. indebitat. fuisset eidem Thomæ Butcher in al' quinque libris similis legalis monetæ Angliæ pro tant. denar. summis ipsius Thomæ Butcher per præfat. Thomam Butcher ad similes special. instanc. & requisition. ipsius Jacobi pro eodem Jacobo ante tempus ill. erogat. & extraposit. ipsoque Jacobo eidem Thomæ Butcher sic inde indebitat. existens. ipse præd. Jacobus in consideration. inde postea scilicet eisdem die & anno ult. supradict. apud Gestingthorpe præd. in Com. præd. super se Assumpsit ac eidem Thomæ Butcher adtunc & ibidem similiter fideliter promisit quod ipse præd. Jacobus præd. quinque libr. ult. mentionat. eidem Thomæ Butcher cum inde postea requisit. esset bene & fideliter solvere & contentare vellet præd. tamen Jacobus sepal. promission. & assumption. suas præd. in forma præd. fact. minime curans Sed machinans & fraudulentè intendens eundem Thomam Butcher callide

Answer A

Indeb. Ac. sump. for s l. lent the Son at the Plaintiff's Request. Vol. II

callide & subdole decipere & defraudare præd. sepeal. denar. sum-
mas seu aliquem inde denar. eidem Thomæ Butcher nondum sol-
vit nec ei pro eisdem hucusque aliquantulum contentavit (licet ad
hoc faciend. idem Jacobus postea scilicet secundo die Augusti
Anno octavo supradicto apud Gestingthorpe præd. in Com. præd.
per eundem Thomam Butcher requisit. fuisset) sed ill. ei hucusque
solvere seu aliquant. pro eisdem contentare omnino recusavit &
adhuc recusat ad dampnum ipsius Thomæ Butcher trigint. librarum
Et inde producit sectam, &c.

Et modo ad hunc diem scilicet diem lunæ prox. post tres septi-
man. Sancti Michaelis isto eodem termino usque quem diem præd.
Jacobus habuit licenc. ad billam præd. interloquend. & tunc ad
respondend', &c. coram Domino Rege apud Westm. ven. tam
præd. Thomas per Attorn. suum præd. quam præd. Jacobus per Jo-
hannem Clarke Attorn. suum Et idem Jacobus defend. vim & Non Assump-
injur. quando, &c. Et dicit quod ipse non Assumpsit super se modo sit.
& forma prout præd. Thomas superius versus eum queritur Et de
hoc pon. se super patriam Et præd. Thomas similiter, &c. Ideo
ven. inde jur. coram Domino Rege apud Westm. die
prox. post Et qui nec, &c. ad recogn', &c. quia
tam, &c. Idem dies dat. est partibus præd. ibidem, &c.

*Placita coram Domina Regina apud Westm.
de termino Sancti Hillarii Anno Regni
Dominae Annæ nunc Reginae Angl', &c.
Primo. Rot. 435.*

Coggs versus Bernard. Vide fo. 26.

Middl. ff. **M**emorandum, Quod als. scilicet termino Sancti
Michaelis ultimo præterito coram Domina
Regina apud Westm. venit Johannes Coggs
per Josephum Sherwood Attorn. suum Et
protulit in Cor. dictæ Dominae Reginae tunc ibidem quandam
billam suam versus Willielmum Barnard in Custod. Mar', &c. de
placito transgr. super casum Et sunt pleg. de prosequend' scilicet
Johan-

Declaration
upon Defen-
dant's Pro-
mise to take
Hogsheads of
Brandy out of
one Cellar,
and safely put
them in ano-
ther; for
Negligence.

Johannes Doe & Richardus Roe Quæ quidem billa sequitur in hæc verba s. Midd. s. Johannes Coggs queritur de Willielmo Bernard in Custod. Mar. Marese. Domine Regine coram ipsa Regina existens pro eo videlicet quod cum præd. Willielmus decimo die Novembris Anno Regni Domini Willielmi tertii nunc Regis Anglia, &c. decimo tertio apud Paroch. Sancti Clementis Dacorum in Com. Middlesex præd. assumpsisset salvo & secure elevare Anglice, *to take up*, diversos Cados, Anglice *Casks*, vini adusti, Anglice *Brandy*, ipsius Johannis tunc in quodam cellar. scituat. in quodam loco vocat. *Brooks-Market* in Paroch. Sanctæ Andree Holborne in Com. præd. existens. Et assumpsisset super se salvo & secure eosdem deponere in quodam al. cellar. scituat. in quodam al. loco vocat. *Water-street* in Paroch. Sancti Clementis Dacorum in Com. præd. Idem Willielmus servientes & Agentes sui postea scilicet eisdem die & anno apud Paroch. Sancti Clementis Dacorum præd. Cados vini adusti præd. tam negligent & improvide tractaverunt in deponendo eos in cellar. ult. mentionat. quod pro defectu bonæ curæ præd. Willielmi servient. & agent. suorum unus eorundem cadorum vini adusti adtunc & ibidem contrafact. fuit Et magna quantitas scilicet Centum & quinquagint. lagenæ vini adusti in eodem cado ex occasione in terram diffusa & spoliat. fuit Cumque etiam præd. Willielmus postea scilicet eodem decimo die Novembris Anno decimo tertio supradicto apud Paroch. Sancti Clementis Dacorum præd. in Com. Middlesex præd. Assumpsisset salvo & secure elevare, Anglice *to take up*, diversos al. Cados, Anglice *Casks*, vini adusti, Anglice *Brandy*, ipsius Johannis tunc in quodam al. cellar. scituat. in quodam loco vocat. *Brooks Market* in Paroch. Sancti Andree Holborne in Com. præd. existens. Et Cados ill. ibidem carro imponere cuidam al. cellar. scituat. in quodam al. loco vocat. *Water-street* in Paroch. Sancti Clementis Dacorum in Com. præd. fore vect. & eosdem cados ad cellar. ult. præd. scituat. in *Water-street* ult. præd. sic ut præferatur. vect. è carro præd. salvo & secure ibidem demittere & in cellar. ult. præd. deponere idem Willielmus servientes & agentes sui postea scilicet eisdem die & anno supradict. apud Paroch. Sancti Clement. Dacorum præd. cados vini adusti ult. præd. tam negligent. & improvide tractaverunt in deponendo eos in cellar. ult. mentionat. quod pro defectu bonæ curæ præd. Willielmi servient. & agent. suorum unus eorundem cadorum vini adusti ult. mentionat. adtunc & ibidem contrafact. fuit. Et magna quantitas scilicet Centum & quinquagint. lagenæ vini adusti ult. præd. in eodem cado ult. mentionat. existens ex occasione adtunc & ibidem in terram diffusa & spoliat. fuit. Unde præd. Johannes dicit quod ipse deteriorat. est Et dampnum habet ad valenciam Centum librarum Et inde producit sectam, &c.

Et modo ad hunc diem scilicet diem Sabbati prox. post Octab. Sancti Hilarii isto eodem termino usque quem diem præd. Willielmus

lielmus Barnard habuit licentiam ad billam præd. interloquend. & tunc ad respondend', &c. coram Domina Regina apud Westm. venit tam præd. Johannes Coggs per Attorn. suum præd. quam præd. Willielmus Barnard per Willielmum Collier Attorn. suum Et idem Willielmus Barnard defend. vim & injur. quando, &c. Et dicit quod ipse non est inde culpabilis Et de hoc pon. se su- Non cul. per patriam Et præd. Johannes Coggs similiter, &c. Ideo ven. inde jur. coram Domina Regina apud Westm. die lunæ prox. post crastinum Purification. beatæ Mariæ Et qui nec, &c. ad recogn', Venire a- &c. quia tam, &c. Idem dies dat. est partibus prædictis ibidem, &c. warded. Postea continuat. inde process. inter partes præd. de placito præd. per jur. posit. inde inter eas in respectum coram Domina Regina apud Westm. usque diem Jovis prox. post Octab. Purification. beatæ Mariæ extunc prox. sequen. Nisi dilectus & fidel. Domina Reginae Johannes Holt Mil. Capital. Justic. Domina Reginae ad placita in Cur. ipsius Domina Reginae coram ipsa Regina tenend. assign. prius die Mercur. prox. post Octab. Purification. beatæ Mariæ apud Westm. præd. in Com. Middlesex præd. in magna Aula placitorum ibidem per formam statut', &c. ven. pro defectu jur', &c. Ad quem diem coram Domina Regina apud Westm. ven. præd. Johannes Coggs per Attorn. suum præd. Et præd. Capital. Justic. Domina Reginae coram quo, &c. misit hic recordum suum coram eo habitum in hæc verba Postea die & loco infracontent. Postea re- coram Johanne Holt Mil. Capital. Justic. infrascript. associat. sibi turned. Johanne Ince Gen. per formam statut', &c. ven. tam infranominat. Johannes Coggs quam infranominat. Willielmus Barnard per Attorn. suos infracontent. Et jur. juratæ ill. exact. similiter ven. qui ad veritatem de infracontent. dicend. electi triat. & jurat. dicunt super sacramentum suum quod præd. Willielmus Barnard est culpabil. de præmissis interius sibi imposit. modo & forma prout præd. Johannes Coggs interius inde versus eum queritur Et assidunt dampna ipsius Johannis Coggs occasione inde ultra mis. & custag. sua per ipsum circa sectam suam in hac parte apposit. ad decem libr. & pro mis. & custag. ill' ad vigint. solid. Ideo consideratum est quod præd. Johannes Coggs recuperet versus præfat. Judgimen pro Quer. Willielmum Barnard dampna præd. per jur. præd. in forma præd. assess. necnon viginti & un. libr. pro mis. & custag. suis præd. eidem Johanni Coggs per Cur. dictæ Domina Reginae nunc hic ex assensu suo de incremento adjudicat' Quæ quidem dampna in toto se attingunt ad trigint. & duas libras Et præd. Willielmus Barnard in Misericordia, &c.

*Placita coram Domino Rege apud Westm.
de termino Sanctæ Trinitatis Anno Reg-
ni Domini Willielmi tertii nunc Regis
Angliæ, &c. nono.*

Harrison versus Cage. Vide fo. 24.

Cantabr. ff.

M

Emorandum. Quod als. scilicet termino Pasche
Anno Regni Domini Gulielmi tertii nunc
Regis Angl', &c. nono coram Domino Rege
apud Westm. ven. Henricus Harrison Gen.

per Michaellem Johnson Attorn. suum & protulit in Cur. dicti
Domini Regis tunc ibidem quandam billam suam versus Adlard.
Cage Gen. & Elizabetham Ux. ejus in Custod. Mar', &c. de pla-
cito transgr. super casum Et sunt pleg. de prosequend. scilicet Jo-
hannes Doe & Richardus Roe Quæ quidem billa sequitur in hac
verba ff. Cantabr. ff. Henricus Harrison Gen. queritur de Adlard.
Cage Gen. & Elizabetha Ux. ejus in Custod. Mar. Marefc. Do-
mini Regis coram ipso Rege existen. pro eo videlicet quod cum
præd. Elizabetha dum ipsa sola fuit scilicet primo die Aprilis
Anno Regni Domini Willielmi tertii nunc Regis Angl', &c. octavo
apud Borough-green in Com' præd. (in consideration. quod idem
Henricus tunc & adhuc cœlebs & minime maritat. existen. ad spe-
cial. instanc. & requisition. ipsius Elizabethæ adtunc & ibidem
agresset cum eadem Elizabetha ac super se assumpsisset & eidem
Elizabethæ fideliter promississet quod ipse idem Henricus duceret in
uxorem suam eandem Elizabetham) super se assumpsit & eidem
Henrico adtunc & ibidem fidelit. promisit quod ipsa dicta Elizabe-
tha caperet in virum suum ipsum Henricum ac licet idem Henricus
promission. & assumption. præd. Elizabethæ præd. fidem adhiben.
matrimon. cum aliqua alia Muliere contrahere penitus recusavit &
adhuc cœlebs & minime maritat. existit ac semper a tempor. conse-
ction. promission. & assumption. præd. (dum eadem Elizabetha fuit
sola) parat. fuit & sæpius obtulit eandem Elizabetham in uxorem
suam legitime ducere videlicet apud Borough-green præd. in Com.
præd. præd. tamen Elizabetha dum ipsa sola fuit promission. &
assumption. suas præd. minime curan. sed. machinan. & fraudu-
lent. intenden. ipsum Henricum in hac parte calide & subdole de-
cipere & defraudare ipsum Henricum in virum suum non cepit
(licet ad hoc faciend. præd. Elizabetha post promission. & assump-
tion. præd. fact. scilicet vicesimo nono die Aprilis Anno octavo
su-

Case against
Husband and
Wife upon a
Promise of
Marriage by
her whilst
sole.

Breach.

supradicto & sapius antea & postea apud Borough-green præd. in Com. præd per eundem Henricum requisit. fuisset sed ipsum in virum suum capere omnino recusavit ac postea scilicet primo die Octobris Anno octavo supradicto apud Borough-green præd. in Com. præd. cepit in virum suum præd. Adlardum contra promission. & assumption. ejusdem Elizabethæ præd. Cumq; etiam præd. Elizabetha dum ipsa sola fuit scilicet primo die Maii Anno octavo supradicto indebitat. fuisset eidem Henrico in trescentis libr. legalis monet. Angl. pro denar. per ipsum Henricum ad special. instanc. & requisition. ipsius Elizabethæ & pro eadem Elizabetha (dum ipsa sola fuit) ante tempus illud solut. & erogat. ac pro denar. per ipsam Elizabetham dum ipsa sola fuit de eodem Henrico ante tempus illud mutuatur. & recept. Et sic inde indebitat. existens eadem Elizabetha dum ipsa sola fuit eidem die & anno ult. mentionat. apud Borough-green præd. in Com. præd. in Conf. inde super se assumpsit & eidem Henrico ad tunc & ibidem fidelit. promisit quod ipsa dicta Elizabetha easdem trescen. libr. eidem Henrico bene & fideliter solvere & contentare vellet præd. tamen Elizabetha dum ipsa sola fuit & præd. Adlard. & Elizabetha post desponsal. inter eos celebrat. promission. & assumption. ipsius Elizabethæ præd. ult. mentionat. in forma præd. fact. minime curant. sed machinant. & fraudulent. intendunt. ipsum Henricum in hac parte callide & subdole decipere & defraudare præd. trecen. libr. seu aliquam inde denar. eidem Henrico (sicut sapius requisit.) non solvere. nec eorum alter solvit Sed ill. ei solvere seu pao eidem aliquantulum contentare omnino recusaver. & adhuc recusant Unde idem Henricus dicit quod ipse deteriorat. est & dampnum habet ad valenc. trium mille librarum Et inde producit sectam, &c.

Request and Refusal.

And marrying the Defendant.

Indeb. Assump for Money laid out for and lent to her whilst sole.

Breach.

Et modo ad hunc diem scilicet. diem Veneris prox. post crastinum Sanctæ Trin. isto eodem termino usque quem diem præd. Adlard. & Elizabetha habuer. licenc. ad billam præd. interloquend. & tunc ad respondend'. &c. coram Domino Rege apud Westm. ven. tam præd. Henricus per Attorn. suum prædict. quam præd. Adlard. & Elizabetha per Richardum Edwards Attorn. suum Et idem Adlard. & Elizabetha defend. vim & injur. quando, &c. & dicunt quod præd. Elizabetha non assumpsit super se modo & forma prout præd. Henricus superius versus eos queritur Et de hoc pon. se super patriam & præd. Henricus similiter, &c. Ideo ven. inde Jur. coram Domino Rege apud Westm. die Mercur. prox. post tres septiman. Sanctæ Trin. Et qui nec, &c. ad recogn'. &c. quia tam, &c. idem dies dat. est partibus præd. ibidem, &c. Postea continuatur. inde process. inter partes præd. de placito præd. per jurat. posit. inde inter eas in respect. coram Domino Rege apud Westm. usque diem Lunæ prox. post tres septiman. Sancti Michaelis ex tunc prox. sequen. Nisi justic. Domini Regis ad Assisas in Com. præd. capiend' assign. prius die Jovis undecimo die Augusti apud Castrum Cantabr.

Non Assumpsit pleaded.

tabr. in Com. præd. per formam statut', &c. ven. pro defectu Jur', &c. Ad quem diem coram Domino Rege apud Westmonasterium ven. præd. Henricus per Attorn. suum præd. & præfat. Justic. coram quibus, &c. miser. hic record. suum coram eis habitum in hac verba ff. Postea die & loco infracontent. coram Edvardo Ward Mil. Capital. Baron. Scaccarii Domini Regis & Thomæ Rokeby Mil. un. Justic. dicti Domini Regis ad placita coram ipso Rege tenend. assign. justic. ipsius Domini Regis ad Assisas in Com Cantabr. capiend. assign. per formam statut', &c. præsentia præfat. Thomæ Rokeby non expectat. virtute brevis dicti Domini Regis de si non omnes ven. infranominat. Henricus Harrison per Attorn. suum infracontent. & infrascript. Adlard. Cage & Elizabetha Uxor ejus licet solempniter exact. non ven. sed default. fecer. Ideo jurat. unde infra sit mentio capiatur versus eos per default. super quo jur. jurata ill. exact. similiter ven. qui ad veritat. de infracontent. dicend. elect. triat. & jurat. dicunt super sacramentum suum quod præd. Elizabetha assumpsit super se modo & forma prout prædict. Henricus interius versus præd. Adlard. & Elizabetham queritur & assidunt dampna ipsius Henrici occasione non performance. promission. & assumption. infraspacificat. ultra mis. & custag. sua per ipsum circa sectam suam in hac parte apposit. ad quadringent. libr. Et pro mis. & custag. ill. ad quadragint. solid. — Ideo considerat. est quod præd. Henricus Harrison recuperet versus præfat. Adlard. Cage & Elizabetham Ux. ejus dampna sua præd. per jur. præd. in forma præd. assess. necnon sexdecim libr. pro misis & custagiis suis præd. eidem Henrico per Cur. dicti Domini Regis nunc hic ex assensu suo de incremento adjudicat. quæ quidem dampn. in tot. se attingunt ad quadringent. & octodecim libr'. Et præd. Adlard. & Elizabetha in Misericordia, &c. Postea scilicet die Sabbati vicesimo sexto die Novembris Anno Regni Domini Willielmi tertii nunc Regis Angl', &c. decimo transcript. record. & process. præd. inter partes præd. de placito præd. cum omnibus ea tangen. prætextu cujusdam brevis dicti Domini Regis de error. corrigend. per præfat. Adlard. & Elizabetham in præmissis prosecut. coram justic. dicti Domini Regis de Communi Banco & Baron. de Scaccario dicti Domini Regis de gradu de le Coyse in Camera Scaccarii præd. juxta formam statut. in Parliament. Domine Elizabethæ nuper Reginæ Angl', &c. apud Westm. vicesimo tertio die Novembris Anno Regni sui vicesimo septimo tent. edit. a prædict. Cur dicti Domini Regis hic coram ipso Rege transmiss. fuer. præd. que Adlard. & Elizabetha in eadem Cur. Camera Scaccarii comparantes quasdam materias pro error. in record. & process. præd. pro revocatione & adnullation. judic. præd' habend. assign. ad quas præd. Henricus in eadem Cur. Camera Scaccarii præd. similiter comparens placitavit quod nec in record. & process. præd. nec in redditione judic. præd. in ullo fuit errat' Postmodumque scilt.

scilt die Martis vicesimo septimo die Junii Anno Regni Domini Willielmi tertii nunc Regis Angl', &c. undecimo vis. & per Cur. Camera Scaccarii præd. diligent. examinat. & plenius intellectis tam Record. & process. præd. ac judic' super eisdem reddit. quam præd. causis pro error. per præfat. Adlard. & Elizabetham assign. & allegat. videbatur eidem Cur. Camera Scaccarii præd. quod record. ill. in nullo vitiosum aut defectivum existit Ac quod record. ill. in nullo fuit errat. Ideo adtunc & ibidem per eandem Cur. Camera Scaccarii prædict. conf. fuit quod judicium prædict. in omnibus affirmaretur & in omni suo robore staret & effectu dictis causis & materiis pro erroribus per præfat. Adlard. & Elizabetham assign. & allegat. in aliquo non obstantibus Et ulterius adtunc & ibidem per eandem Cur. conf. fuit quod præd. Henricus recuperet versus præfat. Adlard. & Elizabetham decem libr. & decem solid. eidem Henrico ex assensu suo per Cur. ibidem juxta form. statut. inde edit. & provis. adjudicat. pro dampnis mis. & custag. suis quæ habuit occasione dilation. execution judic. præd. prætextu prosecution. dicti brevis de error. Ac superinde record. prædict. necnon process. præd. Justic' de Comuni Banco præd. & Baron. præd. Scaccarii præd. coram eis in præmissis habit. coram Domino Rege ubicunque, &c. per eisdem Justic' & Baron. præd. adtunc remittebantur secundum formam statut', &c. Et in Cur. dicti Domini Regis hic coram ipso Rege jam resident, &c. Postea scilt die Mercur. prox. post tres septimanas Sanctæ Trin. Anno Regni Domini Willielmi tertii nunc Regis Angl', &c. decimo tertio coram dicto Domino Rege apud Westm. ven. prædictus Henricus Harrison per Attorn. suum præd. Et cogn. se esse satisfact. per præd. Adlard. & Elizabetham de debito dampn. mis. & custag. præd. Ideo iidem Adlard. & Elizabetha de debito dampn. mis. & custag. ill. sint inde quier', &c.

Judgment affirmed.

Costs adjudged occasione execution. and Remittance of the Record.

Satisfaction acknowledged.

Voll. II.

A a a

Placita

*Placita coram Domina Regina apud Westm.
de Termino Sancti Michaelis Anno Regni
Dominae Annae nunc Reginae Angl', &c.
Primo. Rotulo, 223.*

Justin *versus* Ballin. Vide fo. 34.

Angl', ff.

M

Emorandum, Quod die Veneris prox. post tres septimanas Sancti Michaelis isto eodem termino coram Domina Regina apud Westm.

Suggestion
setting forth
Statute of 13
Ric. 2. where-
by the Admi-
rality have no
Cognizance
of any Thing
done upon
the Land.

Also another
Stat. of 15 R.
2. to the same
Purpose.

Another Stat.
2 H. 4. con-
firming the
former.

Et dat. Cur. dictæ Dominae Reginae nunc hic intelligi & informari quod cum in Statuto in Parlamento Domini Richardi nuper Regis Angl. post conquestum secundi Anno Regni sui decimo tertio apud Westm. in Com. Middlesex. tent. inter al. ordinat. & inactitat. existit autoritate ejusdem Parliamenti quod Admiralli & eorum deputat. extunc deinceps de aliqua re facta infra Regnum Angl. nisi solummodo de re super Mare fact. prout tempore Domini Edvardi nuper Regis Angl. Avi ejusdem Domini Regis Richardi secundi debite usitat. fuer. nullatenus intromitterent prout in eodem statuto inter al. plenius continetur Cumque etiam per aliud statut. in Parliament. præd. nuper Regis Richardi secundi Anno Regni sui decimo quinto tent. apud Westm. præd. in præd. Com. Middlesex edit. inter al. declarat. ordinat. & stabilit. existit quod de omnibus contractibus placitis & querelis ac de omnibus al. rebus fact. sive emergent. infra corpora Com. tam per terram quam per Aquam acetiam de Wrecca Maris Cur. Admiralitatis nullam haberet cognitionem potestatem nec jurisdiction. sed quod omnia hujusmodi contract. placit. & querel. ac omnia al. emergent. infra corpora Com. tam per terram quam per aquam ut præfertur acetiam Wrecca Maris terminat. triat. discuss. & remediatur. forent per legem terræ & non coram Admirallo vell Admiralis nec per ejus locumtenen. quovismodo prout in eodem statut. etiam inter al. plenius continetur Cumque etiam in Parlamento Domini Henrici nuper Regis Angl' post conquestum quarto Anno Regni sui secundo tent. apud Westm. in Com. præd. edit. inter al. ordinat. & inactitat. existit quod prædictum statutum de prædicto Anno dicti nuper Regis Richardi secundi teneretur & custodiretur ac debitæ execution. demandaretur prout in eodem statut. inter al. continetur Cumque etiam omnia & singula placita & negotia tangen. sive concernen. validitat. explication. interpretation.

construction. five exposition. aliquorum statut. in quibuscunque Parliament. dictæ Dominæ Reginæ nunc vel progenitorum suorum nuper Regum sive Reginarum Angl. edit. fact. & provisl. ac omnia & singula placita & cognitiones placitorum pro aliquibus transgr. contract. transgr. super casum pro captione detentione sive conversione aliquorum bonorum sive catallorum vel pro aliqua al. causa quacunque tam super terram quam super aquam infra corpus aliqujus Com. infra hoc Regnum Angl. vel alibi super terram aliquibus persone sive personis contingen. surgen. emergen. fact. sive illat. ad Dominam Reginam nunc & coronam suam Regiam specialiter spectant & pertinent & per leges & statut. hujus Regni Angl. in Cur. Reginæ de recordo temporalibus coram Domina Regina nunc hic vel coram justiciariis sive iudicibus suis temporalibus & non coram Domino Admirallo Angl. nec per Admirallum Angl. vel ejus locumtenen. vel deputat. quovismodo triari terminari & discuti debeant & temporibus retroact. semper hætenus consueverunt Quidam tamen Johannes Ballam & Gulielmus Hart præmissorum non ignari sed machinan. ipsum Nicholaum Justin contra debit. legis hujus Regni Angl. cursum ac contra formam separal. statut. præd. indebite prægravare opprimere & defatigare ac cognition. placiti quæ ad dictam Dominam Reginam nunc & coronam suam Regiam specialiter spectat & pertinet ad aliud examen in Cur. Admiraltatis coram præhonorando viro Domino Carolo Hedges Milite & legum Doctore supremo Cur. Admiraltat. Angl. judic. sive locumtenen. sive surrogat. suo aut aliquo al. judice in hac parte competen. virtute cujusdam processus e dicta Cur. Admiraltat. ad prosecution. Navis vocat. *The Swan of Norway* cujus Berent Gertson nuper fuit sed Johannes Orce als. Ord alias Larwick ejus Magister ejusque apparatus & accessiones & præd. Nicholai Justin proprietar. dictæ Navis emanan. de & concernen. diversis mercimon. & merchandiz. operibus & laboribus per præfat. Johannem Ballam & Gulielmum Hart pro Nave præd. vendit. deliberat. fact. invent. & provisl. extra jurisdiction. Cur. illius minus juste traxit in placitum caute & subdole libellando & suggerendo versus Navem præd. & præd. Nicholaum Justin in eadem Cur. Admiraltat. inter alia ut sequitur videlicet: Impri-
mis, That in the Month of November, in the Year of our Lord One thousand seven hundred, and for several Months before and after the said Berent Gertson of Norway was the Master and Commander of the said Ship the Swan, and had the Care and Government of her as Master, and was put in and appointed Master of her by her Owner, who was then an Inhabitant of Norway and a Subject of the King of Denmark, but is since dead, and so much the said Berent Gertson hath confessed and declared, and this was and is true, publick and notorious,
 & ponit conjunctim divisim & de quolibet Item, *That in the said Month of November in the Year of our Lord One thousand seven hundred, the said Ship the Swan being upon the high and open Seas near*
the

That the Exposition of the Statutes belongs to the Temporal Courts,

Breach.

By Process out of the Admiralty for Goods and Labour.

Libel set forth.

the Port of London, within the Jurisdiction of the High Court of the Admiralty of England, and then standing in great need of a new Cable, a Coil of small Ratlin, a new Anchor and the other Things mentioned in the two Schedules hereunto annexed; the said John Ballam and William Hart did thereupon at the special Instance and Request of the said Berent Gertson, then Master and Commander of the said Ship upon the high and open Seas, and within the Jurisdiction aforesaid, furnish and supply the said Ship with the Cable, Anchor, and other Things mentioned in the said two Schedules, at the respective Rates schedule, to wit, the said John Ballam furnished and supplied her with the Cable, small Ratlin, and the other Things mentioned in the first of the said Schedules, N^o 1, and at the Rates there set down amounting in all to the Sum of One hundred and four Pounds fifteen Shillings Sterling, and the said William Hart furnished and supplied her with the Anchor and the other Things mentioned in the said other Schedule N^o 2, and at the Rates there set down, amounting in the whole to the Sum of nineteen Pounds eleven Shillings and Six-pence Sterling, and the said Cable, Anchor, and other Things mentioned in the said two Schedules, were at the Time and Place aforesaid sent and delivered by the said John Ballam and William Hart, or their Order, on board the said Ship, and have ever since and now are belonging to her and applied to her Use, and the same were at the Time of their being sent and delivered on board the said Ship really and truly worth the respective Rates and Sums of Money schedule, and the like sort of Goods were then usually sold at the same Rates, and this was and is true, publick and notorious, and so much the said Berent Gertson hath confessed and declared to several Persons, ponit tamen de aliis bonis summis tempore & loco, &c. & ut supra: Item, That the said Ship the Swan, shortly after the said Cable, Anchor, and the other Things mentioned in the said two Schedules, was sent and delivered on board her as aforesaid, proceeded to Norway, and did then and ever, and now doth belong to that Place, and the said Berent Gertson her late Master did, and do all reside in Norway, and were and are Subjects to the King of Denmark, and this was and is true, publick and notorious; and so much the said John Orce alias Ord. als. Larwick hath lately confessed and declared to several Persons & ponit ut supra. Item, That the said several Sums of Money mentioned in the said two Schedules, in all amounting in the Whole to the Sum of One hundred twenty-four Pounds six Shillings and Six-pence Sterling, and are really and truly due to the said John Ballam and William Hart, for the said Cable, Anchor, and the other Things schedule, and the said John Orce alias Ord alias Larwick, the present Master of the said Ship, hath lately confessed and declared to several Persons that the aforesaid Sums of Money are yet unpaid, and that it is so set down in Instructions given him by the said Nicholas Justin the Owner of the said Ship, or to that effect, ut supra: Item, That the said John Ballam and William Hart have several Times demanded the Sums of Money

ney due to them as aforesaid, of the present Master of the said Ship, personally, and of her said Owner by Letters, but they refusing or delaying to pay for the same, and the said John Ballam and William Hart having no Remedy for the Recovery thereof but by arresting the said Ship in the High Court of the Admiralty of England, have caused the same to be arrested by Virtue of a Warrant from the said Court, and all Persons having or pretending to have any Right, Title, or Interest therein, to be duly cited to appear in the said Court to answer to them the said John Ballam and William Hart, in a Cause or Causes civil and maritime, and the said Nicholas Justin hath there appeared by his Proctor and submitted himself to the Jurisdiction of the said Court, and as Owner of the said Ship given Bail to answer the Action brought by the said John Ballam and William Hart against the said Ship, and to abide by the Judgment of the said Court, and to pay what shall be adjudged, together with Expences of Suit, and thereupon procured the said Ship to be released from the said Arrest, as by the Proceedings of the said Court, to which the Party proponent refers himself, doth appear.

N^o 1. Delivered for the Use of the Ship *Swan* of Longsaud, Mr. Berent Gertson Commander, November the 16th, 1700. per John Ballam.

C.	q.	lb.		l.	s.	d.
59	1	10	A Cable of 15, in full 120 Fathom			
00	1	03	A Coil of small Ratlin.			
59	2	13	at 35 s. per Hundred is	104	6	8
			One Hand-line, 4 Skains of Marlin and Housen.	00	3	4
			Lighteridge on Board.	00	5	0
				104	15	0

N^o 2. Smith's Work to the Ship *Swan*, Berent Gertson Master, November the 25th, 1700. per William Hart.

	l.	s.	d.
For one new Anchor weighing 13 C. 24 l. per Contract.	19	00	4
For One hundred Five-Inch Nails.	00	4	2
For One hundred Four-Inch Nails.	00	2	6
For Two hundred of Nails.	00	3	0
For mending one Pump-Iron.	00	1	6
	19	11	6

Item quod præmissa omnia & singula fuerunt & sunt vera & notoria prout per veram copiam libelli præd. in Cur. dictæ Dominae Reginae coram ipsa Regina nunc hic habit. lect. & audit. inter alia plenius liquet & apparet ubi revera mercimon. & merchandiz.

Voll. II.

B b b

opera

Averment,
that the
Goods and
Work were
for the Ship
in the River
of Thames.

Plea in Ad-
miralty.

opera & labores præd. invent. provis. fact. vendit. & deliberat. fuer. pro Nave præd. in Rivo Thameſis videlicet in Paroch. Sancti Pauli Shadwell in Com. Middleſex. & non ſuper altum Mare nec infra jurisdiction. Cur. Admiralitat. præd. prout per libellum præd. ſuperius ſupponitur ad quæ omnia & ſingula iidem Johannes Ballam & Gulielmus Hart ipſum Nicholaum Juſtin in præd. Cur. Admiral. coram præfat. iudice ejuſdem Cur. ſuper præmiſſis comparere & eiſdem Johanni Ballam & Gulielmo Hart de & ſuper eiſdem reſpondere minus juſte aſtrinxer. ac licet idem Nicholaus Juſtin omnia & ſingula præmiſſa per ipſum ſuperius ſuggeſt. & allegat. in præd. Cur. Admiralitat. coram præfat. iudice Cur. illius pro exoneration. & diſcuſſione ſua abinde in hac parte ſuperius placitavit & allegavit & ill. inevitabili teſtimonio & veritat. probare obtulit Idem tamen Iudex Cur. illius placitum allegation. & probation. ill. admittere penitus reſuſavit & adhuc reſuſat Et præd. Johannes Ballam & Gulielmus Hart de & ſuper præmiſſis præd. ipſum Nicholaum Juſtin ad reſpondend. compellere & per ſententiam & final. decret. Cur. Admiral. præd. in præmiſſis condemnari totis ſuis viribus conatur & indices machinat. in dictæ Dominæ Reginz nunc contemptum coronæ & dignitat. ſuarum exheredation. & ipſius dampnum depauperation. & gravamen manifeſtum ac contra legem & conſuetudinem Regni dictæ Dominæ Reginz nunc Angliæ necnon contra formam & effectum ſeparat. ſtatut. præd. in huiusmodi caſu in forma præd edit. & provis. Et hoc idem Nicholaus Juſtin parat. eſt verificare Unde idem Nicholaus auxilium & munificentiam Cur' dictæ Dominæ Reginz coram ipſa Regina nunc humillime implorando pet. ſibi remedium & breve dictæ Dominæ Reginz hic prohibition. præfat. iudici Cur. Admiral. præd. vel alicui al. iudici in hac parte competen. cui-cunque dirigend. ad prohibend. ipſum vel ipſos ne placitum præmiſſa præd. quoviſmodo concernen. ſeu tangen. coram ipſo vel ipſis teneat, &c. Et ei conceditur, &c.

*Placita coram Domino Rege apud Westm.
de termino Paschæ Anno Regni Domini
Willielmi tertii nunc Regis Angliæ, &c.
duodecimo. Rotulo 108.*

Hilliard *versus* Cox. Vide fo. 37.

Berks, ff.

Memorandum, Quod als. scilt. termino Sancti Michaelis ultimo præterito coram Domino Rege apud Westm ven. Daniel Hilliard Clericus Administrator omnium & singulorum bonorum & catallorum jurium & creditorum quæ fuer. Johannis Cox defuncti tempore mortis suæ qui obiit intestat. per Edvardum Chapman Attorn. suum Et protulit in Cur. dicti Domini Regis tunc ibidem quandam billam suam versus Thomam Cox in Custod. Mar', &c. de placito transgr. super casum Et sunt pleg. de prosequend. scilicet Johannes Doe & Richardus Roe Qui quædam billa sequitur in hæc verba scilicet Berks ff. Daniel Hilliard Clericus Administrator omnium & singulorum bonorum & catallorum jurium & creditorum quæ fuer. Johannis Cox defuncti. tempore mortis suæ qui obiit intestat. queritur de Thoma Cox in Custod. Mar. Marefc. Domini Regis coram ipso Rege existen. pro eo videlt. quod cum præd. Thomas primo die Martii Anno Regni Domini Willielmi tertii nunc Regis Angliæ, &c. undecimo apud Farrington in Com. præd. Indebitat. fuisset præfat. Johanni in vita sua in Centum solid. legalis monetæ Angl. pro diversis bon. mercimon. & merchandiz. ipsius Johannis per præfat. Johannem in vita sua eidem Thomæ ad special. instanc. & requisition. ipsius Thomæ ante tempus illud vendit. & deliberat' Et sic inde indebitat. existen. præd. Thomas in consideration. inde postea scilicet eidem die anno & loco supradict. super se assumpsit & eidem Johanni in vita sua adtunc & ibidem fidelit. promisit quod ipse præd. Thomas præd. Centum solid. præfat. Johanni cum inde postea requisit. esset bene & fidelit. solvere & contentare vellet Cumque etiam postea scilicet secundo die Martii Anno undecimo supradicto apud Farrington præd. in cons. quod præd. Johannes in vita sua ad similes instanc. & requisition. ipsius Thomæ vendidisset & deliberasset eidem Thomæ diversa al. bon. mercimon. & merchandiz. ipsius Johannis præd. Thomas super se assumpsit. & eidem Johanni adtunc & ibidem fideliter promisit quod ipse præd. Thomas tant. denar.

Indeb. Assump. by an Administrator for Goods sold and delivered by the Intestate.

Quantum the-ruit.

sum-

Breach.

Letters of
Administra-
tion com-
mitted.

Request.

Profert of the
Letters of Ad-
ministration.Pet. Oyer of
the Letters
of Admini-
stration.

summas pro bon. mercimon. & merchandiz. præd. ult. mentio-
nat. quant. bon. mercimon. & merchandiz. ill. tempore vendition.
& deliberation. eorundem rationabilit. valebant eidem Johanni
cum inde postea requisit. esset bene & fidelit. solvere & contentare
vellet. Et idem Daniel in facto dicit quod bon. mercimon. &
merchandiz. præd. ult. mentionat. tempore vendition. & delibera-
tion. eorundem rationabiliter valebant al. centum solid. similis le-
galis monet. Angl. videlicet apud Farringdon præd. Et inde idem
Thomas adtunc & ibidem notitiam habuit præd. tamen Thomas
separal. promission. & assumption. suas præd. in forma præd. fact.
minime curans sed machinans & fraudulent. intendens eundem Jo-
hannem in vita sua & præfat. Daniel. post ipsius Johannis mortem
in hac parte casside & subdole decipere & defraudare præd. separal.
denar. sum. præfat. Johanni in vita sua seu præfat. Daniel. post
ipsius Johannis mortem (cui quidem Daniel. administratio omnium
& singulorum bonorum & catallorum jurium & creditorum quæ
fuer. præfat. Johannis tempore mortis suæ per Josephum Wood-
ward legum Doctor. ac Domini Archini. Archinat. Berks officialis
legitime constitut. post mortem ejusdem Johannis scilicet decimo
die Aprilis Anno Domini Millesimo sexcentesimo nonagesimo
nono apud Farringdon præd. debito modo commissâ fuit cui qui-
dem Official. commissio Administration. præd. in hac parte de jure
pertinuit) nondum solvit nec eis seu eorum alteri pro eisdem ali-
qualit. contentavit licet ad hoc faciend' præd. Thomas post mor-
tem ipsius Johannis & post Administration. præd. in forma præd.
commiss. scilicet vicesimo die Aprilis Anno undecimo supradicto
apud Farringdon præd. per præfat. Danielelem requisit. fuit sed ill.
præfat. Johanni in vita sua & præfat. Danieli post ipsius Johannis
mortem solvere aut aliqualit pro eisdem contentare omnino recu-
savit & præfat. Daniel adhuc recusat Unde idem Daniel dicit
quod ipse deteriorat. est & dampnum habet ad valenc. decem libr.
Et inde producit sextam, &c. Et profert hic in Cur. idem Daniel
litteras Administrator. præd. Josephi Woodward quæ commissio.
Administration. prædict. in forma præd. testantur quarum dat. est
die & anno supradicti, &c.

Et modo ad hunc diem scilicet diem Mercur. prox. post quin-
den. Pascha isto eodem termino usque quem diem præd. Thomas
Cox habuit licenc. ad billam præd. interloquend. & tunc ad respon-
dend. &c. coram Domino Rege apud Westm' ven. tam præd.
Daniel Hillyard per Attorn. suum præd. quam præd. Thomas Cox
per Edwardum Serle Attorn. suum Et idem Thomas defend. vim
& injur. quando, &c. Et petit audit. præd. litterarum Administra-
tion. præd. modo hic in Cur. prolat. & in narration. præd. supe-
rius specificat. & ei legitur in hæc verba ff. Josephus Woodward
legum Doctor ac Domini Archini Archinat. Berks official. legitime
constitut. dilecto nobis in Christo Daniel Hillyard Clerico princi-
pal. creditor Johannis Cox dum vixit de Newbery infra Com. &
Archi-

Archinatum Berks præd. Grocer nuper defunct. salutem in Domi-
no Cum dict. Johannes Cox sic ut præmittit. defunct. nuper ab in-
testato decesserit nos igitur affectan' ut bona jura & credita ejus-
dem defunct. bene & fideliter administrantur & in pios usus con-
vertantur & disponantur ad administrand. igitur bona jura & cre-
dita præd. dict. defunct. ad bene & fideliter disponend' de eisdem
necnon credita quæcunq; dict. defunct. petend. colligend. levand.
& exigend. & quæ dict. defunct. dum vixit & mortis suæ tem-
pore pertinuerunt ac de solvend. ei alienum in quo dict. defunct.
huiusmodi mortis suæ tempore extit. obligat. quatenus bona jura &
credita huiusmodi ad hoc extendunt juxta ratam eorundem tibi
de ejus fidelitat. in hac parte confidimus permittitur de bene & fi-
deliter administrando eadem ac de pleno & fidel' inventario om-
nium & singulorum bonorum jurium & creditorum dict. defunct.
conficiend. illudque in Registrum Domini Archini Berks præd. citra
vel ante primum diem mensis Junii prox. futur. exhibend. nec-
non de pleno & vero Compoto calcul. sive ratiocinio de ac super
additione tua citra vel ante primum diem Martii qui erit in Anno
Domini Millesimo sexcentesimo nonagesimo nono inde reddend.
ad Sancta Dei Evangelia in debita juris forma rite jurat. plenam
tenore præsentium committimus potestatem Teque Administrator.
omnium & singulorum bonorum jurium & creditorum dict. de-
funct. ordinamus deputamus & constituimus per præsentem Anna
Cox vidua relicta ejusdem defunct. literis Administrator. bonor.
&c. in scriptis prius renuncian' Dat. apud Oxon. sub sigillo officii
nostri præd. decimo die Aprilis Anno Domini Millesimo sexcentesi-
mo nonagesimo nono Quibus lectis & auditis idem Thomas dicit
quod præd. Daniel actionem suam præd. inde versus eum habere
seu manutenere non debet quia dicit quod præd. Thomas tempore
mortis præd. Johannis Cox. & tempore Commission. Administra-
tion. præd. & diu ante fuit inhabitans & commorans in civitat.
Oxon. in Com. Oxon. quæ quidem civitas est & semper fuit infra
Diocesin de Oxon. & extra Archidinat. Berks præd. & jurisdiction.
Archini Archidinat. ill. qui quidem Archidinat. præd. & tot. Com.
Berks præd. sunt & semper fuerunt infra Diocesin de Sarum &
non infra Diocesin de Oxon. per quod commissio Administration.
omnium & singulorum bonorum & catallorum jur. & creditorum
quæ fuer. præfat. Johannis Cox tempore mortis suæ ad Thomam
providentia Divina adtunc & adhuc Cantuar. Archiepiscopum ra-
tione prærogativæ suæ & non ad præd. Archidiaconum Archinat.
Berks vel aliquem alium inferiorem judicem de jure pertinuit ac
præd. litere Administration. hic in Cur. prolat. sunt vacuæ & nul-
lius valoris in lege & hoc parat. est verificare unde pet. judic. si
præd. Daniel actionem suam præd. inde versus eum habere seu
manutenere debeat, &c.

Pleas that
the Intestate
at the Time
of his Death
lived in ano-
ther Diocess.

Et præd. Daniel Hilliard dicit quod ipse per aliqua per præd. Thomam Cox superius placitando allegat' ab actione sua præd. inde

D-murrer
with special
Cases.

Voll. II.

C c c

inde

inde versus ipsum Thomam habend. præcludi non debet quia dicit quod placitum præd. per ipsum Thomam modo & forma præd. superius placitat. materiaq; in eodem content. minus sufficien. in lege existit ad ipsum Daniel. ab actione sua præd. inde versus ipsum Thomam habend. præcludend. Ad quod quidem placitum modo & forma præd. superius placitat. ipse idem Daniel necesse non habet nec per legem terræ tenetur aliquo modo respondere Et hoc parat. est verificare unde pro defectu sufficientis placiti in hac parte idem Daniel petit iudicium & dampna sua occasione præmissorum sibi adjudicari, &c. Et pro causis morationis in lege secundum formam statnt. in huiusmodi casu edit & provis. idem Daniel ostendit & Curiz hic demonstrat has causas subsequen. videlicet eo quod non apparet per placitum præd. quod præd. Thomas Cox non fuit commorans infra Diocesin Episcopi Sarum tempore mortis prædicti Johannis Cox quodque placitum illud incertum est & caret forma, &c.

Joinder.

Et præd. Thomas Cox dicit quod placitum præd' per ipsum Thomam modo & forma præd. superius placitat. materiaque in eodem content. bon. & sufficien. in lege exist. ad ipsum Daniel. ab actione sua præd. inde versus ipsum Thomam habend. præcludend. quod quidem placitum materiamque in eodem content. idem Thomas parat. est verificare & probare prout Cur'. &c. Et quia præd. Daniel ad placitum illud non respondit nec ill. hucusq; aliquant. dedit. idem Thomas ut prius pet. iudic. & quod præd. Daniel ab actione sua præd. inde versus ipsum Thomam habend. præcludetur, &c. Sed quia Cur. dicti Domini Regis nunc hic de iudicio suo de & super præmiss. reddend. nondum advisatur dies inde dat. est partibus præd. coram Domino Rege apud Westm. usq; diem prox. post de iudicio suo inde audiend. eo quod curia dicti Domini Regis nunc hic inde nondum, &c.

2.

Placita

*Placita coram Domino Rege apud Westm.
de termino Sanctæ Trinitatis Anno Reg-
ni Domini Willielmi tertii nunc Regis
Angliæ, &c. duodecimo. Rotulo 369.*

Gidley *versus* Williams. Vide fo. 37.

Cornub' ff. **M**emorandum, Quod als. scilicet termino Paschæ ult. præterito coram Dom. Reg. apud Westm. ven. Thomasina Gidley vidua Administratrix omnium bonorum & catallorum Richardi viri sui nuper defuncti. per Petrum Champion Attorn. suum & protulit in Cur. dicti Domini Regis tunc ibidem quandam billam suam versus Pethericum Williams als. dict. Petherick Booth *of the Parish of Withiel in the County of Cornwall Teoman*, in Custod. Mar', &c. de placito debiti Et sunt pleg. de prosequend' scilicet Johannes Doe & Richardus Roe Quæ quidem billa sequitur in hæc verba ff. Cornub. ff. Thomasina Gidley vidua & Administratrix omnium bonorum & catallorum Richardi Gidley viri sui nuper defuncti. queritur de Petherico Williams als. dict. Petherick Booth *of the Parish of Withiel in the County of Cornwall Teoman*, in Custod. Mar. Marefc. Domini Regis coram ipso Rege existen. de placito quod reddat ei viginti libras legalis monete Angli' quas ei DEBET ET injuste detinet pro eo videlt. quod cum præd. Pethericus decimo die Junii Anno Millesimo sexcentesimo octogesimo quinto apud Saint Collumbe Major. in Com. præd' per quandam billam suam obligator. sigillo ipsius Petherici sigillat. Cur. que dicti Domini Regis nunc hic ostens. cujus dat. est eisdem die & anno cognovit se debere & indebitari eidem Richardo Gidley in vita sua in integra summa decem libr. bonæ & legalis monete Angliæ solvend. eidem Richardo in vita sua Executribus & Administrat'oribus sive assign. suis apud vel super decimum diem Decembris prox. sequen' dat. billæ obligator. præd. & pro vera solutione inde obligavit se Executores & Administratores suos in plena summa viginti libr. legalis Anglicanæ monete Et præd. Thomasina in facto dicit quod præd. Pethericus non solvit eidem Richardo in vita sua præd. summam decem libr. apud vel super decimum diem Decembris prox. sequen. dat. billæ obligator. præd. quas eidem Richardo super eundem diem solvisse debuit secundum formam & effectum billæ obligator. præd. per quod actio accrevit eidem Richardo

Declaration
by an Admin-
istrator up-
on a Bill obli-
gatory to the
Intestate.

N.B. The De-
fendant not
having de-
murr'd, the
bringing this
Action in the
Debet and De-
tinet is cured
by the Ver-
dict. 1 Sid.
347, 379.
Show. 57.

The granting
the Letters of
Administra-
tion ought to
have been
here inserted.

Imparlane.

Non est fac-
tum pleaded.

Venire a-
warded.

Return of
the Poſtea.

Default.

Verdict pro
Quer.

chardo in vita sua & præd. Thomasina post mortem præd. Richardi ad exigend. & habend. de præfat. Petherico præd. summam viginti librar. præd. tamen Pethericus licet sæpius requisit, &c. præd. viginti libr. eidem Richardo in vita sua seu eidem Thomasina post mortem præd. Richardi solvere omnino hucusque recusavit & adhuc eidem Thomasina solvere recusat ad dampnum ipsius Thomasinae viginti & quinque librar. Et inde producit sectam, &c. Et præd. Thomasina profert hic in Cur. literas Administratorias præd. Richardi per quas satis liquet Cur. hic præd. Thomasinam fore Administratric. præd. Richardi & inde habere Administration', &c.

Et modo ad hunc diem scilicet diem Veneris prox. post crastinum Sanctæ Trinitatis isto eodem termino usque quem diem præd. Pethericus habuit licenciam ad billam præd. interloquendi & tunc ad respondend', &c. coram Domino Rege apud Westmonasterium venit tam præd. Thomasina per Attorn. suum præd. quam præd. Pethericus per Josephum Hawkey Attorn. suum Et idem Pethericus defendit vim & injur. quando, &c. Et dicit quod ipse de debito præd. virtute billæ obligator. præd. onerari non debet quia dicit quod billa illa præd. non est factum suum Et de hoc pon. se super patriam Et præd. Thomasina similiter, &c. Ideo ven. inde jur. coram Domino Rege apud Westm. die Mercurii prox. post tres septimanas Sanctæ Trinitatis Et qui nec, &c. ad recogn', &c. Quia tam, &c. Idem dies datus est partibus prædictis ibidem, &c. Postea continuat. inde process. inter partes præd. de placito præd. per jur. possit. inde inter eas in respectum coram Domino Rege apud Westm. usque diem Mercurii prox. post tres septimanas Sancti Michaelis extunc prox. sequen. Nisi justic. Domini Regis ad assisas in Com. præd. capiend. assign. prius die Veneris nono die Augusti apud Lauceston in Com. præd. per formam Statut' &c. ven. pro defectu jur', &c. Ad quem diem coram Domino Rege apud Westm. venit præd. Thomasina per Attorn. suum præd. Et præfat. justic. Domini Regis coram quibus, &c. miser. hic recordum suum coram eis habitum in hac verba Postea die & loco infracontent. coram Johanne Powell Mil. un. Justic' Domini Regis de Banco justic. ejusdem Domini Regis ad Assisas in Com. Cornub. capiend. assign. & Francisco Swanton Ar. eidem Johanni Powell hac vice associat. per formam Statuti, &c. ven. infranominat. Thomasina Gidley vidua per Attorn. suum infracentent. & infraſcript. Pethericus Williams licet ſolempniter exact. non ven. ſed default. fecit Ideo jur. unde infra ſit mentio capiatur verſus eum per default' Et jur. jurata illius exact. vener. qui ad veritat' de infracentent. dicend. elect. triat. & jurat. dicunt ſuper ſacramentum ſuum quod billa obligatoria infra ſpecificat. eſt factum præd. Petherici Williams prout præd. Thomasina interius verſus eum narravit Et aſſidunt dampna ipsius Thomasinae occasione detentionis debiti infraſcript. ultra miſ. & cuſtag. ſua per ipſam circa ſectam ſuam in hac parte appoſit. ad duos denar. Et pro miſ. & cuſtag. ill. ad quadraginta ſolid.

solid. Ideo consideratum est quod præd. Thomasina recuperet versus præfat. Pethericum debitum suum præd. ac dampna præd. per jur. in forma præd. assel. necnon tresdecim libr. & decem solid. pro mis. & custag. suis præd. eidem Thomasinæ per Cur. dicti Domini Regis nunc hic ex assensu suo de incremento adjudicat. Quæ quidem dampna in toto se attingunt ad quindecim libr. decem solid. & duos denar. Et præd. Pethericus capiatur, &c.

Capiatur.

*Placita coram Domina Regina apud Westm.
de termino Sanctæ Trinitatis Anno Reg-
ni Domine Annæ nunc Regine Angliæ,
&c. tertio. Rotulo 90.*

Slater versus May. Vide fo. 42.

London, ff.

Memorandum, Quod als. scilt. termino Paschæ ultimo præterito coram Domina Regina apud Westm. venit Johannes Slater Administrator omnium & singulorum bonorum jurium & creatorum quæ fuer. Christopheri Youlden defunct. tempore mortis suæ per Thomam Moore Attorn. suum Et protulit in Cur. dictæ Domine Regine tunc ibidem quandam billam suam versus Johannem May in Custod. Mar. &c. de placito transgr. super casum. Et sunt pleg. de prosequend. scilicet Johannes Doe & Richardus Roe Quæ quidem billa sequitur in hæc verba ff. London ff. Johannes Slater Administrator omnium & singulorum bonorum jurium & creditorum quæ fuer. Christopheri Youlden defunct. tempore mortis suæ queritur de Johanne May in Custod. Mar. Marefc. Domine Regine coram ipsa Regina existen. pro eo videlicet quod cum prædictus Johannes May vicesimo tertio die Januar. Anno Domini Millesimo sexcentesimo nonagesimo nono apud London videlt. in Paroch. beatæ Mariæ de arcubus in Warda de Cheape indebitat. fuisset eidem Christophero in vita sua in triginta libr. legalis monetæ Angl. pro tant. denar. summa ipsius Christopheri in vita sua per ipsum Christopherum in vita sua præd. Johanni May ad special. instanc. & requisition. ipsius Jo-

Declaration
by an Admi-
nistrator du-
ring the Ab-
sence of Exe-
cutor, for
Money lent
by the Inte-
state.

Indeb. As-
sump.

Another In-
deb. assump.
for Money
had and re-
ceived to the
Intestate's
Use.

Breach:

Letters of
Administra-
tion set forth.

Request.

JA. debet

hannib May ante tempus illud mutuo dat. & accommodat. Et sic inde indebitat. existen. ipse præd. Johannes May in consideratione inde postea scilt. eisdem die & anno supradict. apud London præd. in Paroch. & Warda præd. super se assumpsit & eidem Christophero in vita sua adtunc & ibidem fidelit. promissit quod ipse præd. Johannes May præd. triginta libr. eidem Christophero cum inde postea requirit. esset bene & fidelit. solvere & contentare vellet Cumque etiam præd. Johannes May postea scilt. eisdem die & anno supradict. apud London præd. in Paroch. & Warda præd. indebitat. fuisse eidem Christophero in vita sua in al. triginta libr. similis legalis monetæ Angliæ pro tal. denar. summa ipsius Christophori in vita sua per ipsum Johannem May pro eodem Christophoro & ad usum ipsius Christophori ante tempus illud habit. & recept. Et sic inde indebitat. existen. prædict. Johannes May postea scilicet eisdem die & anno supradict. apud London præd. in Paroch. & Warda præd. in consideratione inde super se assumpsit & eidem Christophoro in vita sua adtunc & ibidem fidelit. promissit quod ipse præd. Johannes May præd. trigint. libr. ult. mentionat. eidem Christophoro cum inde postea requirit. esset bene & fideliter solvere & contentare vellet Præd. tamen Johannes May separat. promission. & assumption. suas præd. in forma præd. fact. minime curans sed machinans & fraudulent. intendens eundem Christophorum in vita sua & præd. Johannem Slater post ipsius Christophori mortem (Cui quidem Johanni Slater Administratio omnium & singulorum bonorum jurium & creditorum que fuer. præd. Christophori Youlden tempore mortis suæ cum testamento suo annexo in usum beneficium & durante absentia Elizabethæ Vittery Executric. in testamento præd. nominat. per Thomam providentia divina Cantuar. Archiepiscopum totius Angliæ primat. & metropolitan. decimo quinto die Octobris Anno Domini Millesimo septingentesimo tertio apud London præd. in Paroch. & Warda præd. debita jatis forma commissa fuit) de præd. separat. denar. summis in hac parte callide & subdole decipere & defraudare præd. separat. denar. summas seu aliquem inde denar. eidem Christophoro in vita sua seu præd. Johanni Slater post ipsius Christophori mortem non solvit nec eis pro eisdem hucusque aliquialiter contentavit (Nec ad hoc faciend. præd. Johannes May per ipsum Christophorum in vita sua & per præd. Johannem Slater post ipsius Christophori mortem & Commission. Administration. præd. apud London præd. in Paroch. & Warda præd. requirit. fuit) sed ill. eidem Christophoro in vita sua solvere seu pro eisdem aliquialit. contentare omnino recusavit & præd. Johanni Slater solvere adhuc recusat ad dampnum ipsius Johannis Slater quadragint. libr. Et inde producit rectam, &c. Et profert hic in Cur. idem Johannes Slater literas administratorias præd. Archiepiscopi præd. quæ commission. administration. præd. Johanni Slater in forma præd. testantur quarum dat. est eisdem die & anno in ea parte superius mentionat. &c.

Et modo ad hunc diem scilicet diem Veneris prox. post crastinum Sancte Trinitatis isto eodem termino usque quem diem præd. Johannes May habuit licent. ad billam præd. interloquendi & tunc ad respondend., &c. coram Domina Regina apud Westm. venit tam præd. Johannes Slater per Attorn. suum præd. quam præd. Johannes May per Richardum Gates Attorn. suum. Et idem Johannes May defendit vim & injur. quando, &c. Et dicit quod narratio præd. materiaque in eadem content. minus sufficien. in lege existit ad præd. Johannem Slater ad actionem suam præd. inde versus ipsum Johannem May habend. manutenend. Quodq; ipse ad narrationem illam modo & forma præd. declarat. necesse non habet nec per legem terra tenetur aliquo modo respondere. Et hoc parat. est verificare Unde pro defectu sufficien. narration. in hac parte idem Johannes May petit judicium si præd. Johannes Slater actionem suam præd. versus ipsum Johannem May habere debeat, &c. Et pro causis moration in lege in hac parte idem Johannes May secundum formam statuti in hujusmodi casu nuper editi. & provis. ostend. & Cur. hic demonstrat has causas subsequen. videlicet quod narratio præd. est omnino incerta duplex insensibilis insufficien. in lege & caret forma, &c.

Demurrer to the Declaration.

Et præd. Johannes Slater dicit quod per aliqua per præd. Johannem May superius præallegata Nar. præd. ipsius Johannis Slater cassari minime debet quia dicit quod narratio præd. materiaque in eadem content. bon. & sufficien. in lege existit. ad ipsam Johannem Slater ad actionem suam præd. inde versus ipsum Johannem May habend. manutenend. quam quidem narrationem materiamque in eadem content. Idem Johannes Slater parat. est verificare & probare prout Cur., &c. Et quia præd. Johannes May ad narr. ill. non respond. nec ill. hucusque aliquasit. dedit. idem Johannes Slater petit judicium & dampna sua occasione præmiss. sibi adjudicari, &c. Sed quia Cur. dictæ Domine Regine nunc hic de judicio de & super præmiss. reddend. nondum advisatur dies inde dat. est partibus præd. coram Domina Regina apud Westm. usque diem prox. post de judicio suo de & super præmiss. ill. audiend. eo quod Cur. dictæ Domine Regine hic inde nondum, &c.

Joinder.

Placita

*Placita coram Domino Rege apud Westm.
de termino Sancti Michaelis Anno Reg-
ni Domini Willi. tertii nunc Regis An-
gl. &c. undecimo. Rotulo 377.*

Bishop of Salisbury versus Phillips. Vide fo. 43.

Writ of
Error.

DOMINUS REX Mandavit dilecto & fideli suo Georgio Treby Militi Capitali Justiciario suo de Banco breve suum clausum in hac verba scilicet Guilielmus tertius Dei gratia Angliae Scotiae Franciae & Hiberniae Rex fidei defensor, &c. Dilecto & fideli suo Georgio Treby Militi Capitali Justiciario suo de Banco salutem Quia in recordo & processu acetiam in redditione iudicii loquelae quae fuit in Curia nostra coram vobis & sociis vestris Justiciariis nostris de Banco praedicto per breve nostrum inter Willielmum Phillipps Executorem testamenti Willielmi Phillipps generosi Patris sui nuper defuncti & Gilbertum Episcopum Sarum & Johannem Berrow Clericum de eo quod iidem Episcopus & Johannes permetterent ipsum Willielmum Phillipps modo querentem praesentare idoneam personam ad Ecclesiam de Stanton als. Stanton Fitz-Warren als. Stanton Fitz-Herbert in Com. Wilts quae vacabat & ad suam spectabat donationem ut dicebatur Error intervenit manifestus ad grave dampnum ipsorum Episcopi & Johannis sicut ex querela sua accepimus nos errorem si quis fuit modo debito corrigi & eidem Episcopo & Johanni plenam & celerem justitiam fieri volentes in hac parte vobis mandamus quod si iudicium inde reddit. sit tunc recordum & processum praedicta cum omnibus ea tangeu. nobis sub sigillo vestro distincte & aperte mittatis & hoc breve ita quod ea habeamus a die Paschae in quinque septimanas ubicunque tunc fuerimus in Angli. ut inspectis recordo & processu praedictis ulterius inde pro errore ill. corrigend. fieri fac. quod de jure & secundum legem & consuetud. Regni nostri Angli. fuerit faciend. Teste me ipso apud Westm. vicesimo sexto die Aprilis Anno Regni nostri undecimo.

Hale.

Respons. Georgii Treby Mil. Capital. Justic. infranominat.

Record & process. loquere unde infra fit mentio cum omnibus ea tangen. coram Domino Rege ubicunque, &c. ad diem infracontent. mitto in quodam Recordo huic brevi annex. prout interius mihi praecipitur.

Geo. Treby.
Placita

Placita irrotulat. apud Westm. coram Georgio Treby Mil. & Sociis suis Justic. Domini Regis de Banco de termino Sanctæ Trinitatis Anno Regni Domini Gulielmi tertii Dei gratia Angliæ Scotiæ Franciæ & Hiberniæ Regis Fidei Defensoris, &c. decimo. Rotulo 1562.

Wils. ff. Gilbertus Episcopus Sarum & Johannes Berrow Clericus sum. fuerunt ad respondend. Willielmo Phillips generoso executor. testamenti & ult. voluntat. Willielmi Phillips generosi patris sui nuper defuncti. de placito quod permittant ipsum Willielmum Phillips modo quer. præsentare idoneam person' ad Ecclesiam de Stanton als. Stanton Fitz-Warren als. Stanton Fitz-Herbert quæ vacat & ad suam spectat donation', &c. Et unde idem Willielmus Phillips modo quer. per Dionysium Russel Attorn. suum dicit quod cum quidam Richardus Organ & Johannes Organ fuer. seisciti ut de feodo & jure de advocacione præd. Ecclesiæ ut de uno grosso Et sic inde seisciti existen. præd. Richardus Organ & Johannes Organ vicesimo sexto die Junii Anno Regni Domini Jacobi nuper Regis Angl. primi decimo tertio apud Stanton præd. in Com. præd. per quandam indentur. suam inter præd. Richardum Organ per nomen Richardi Organ de Damborne in Com. Berks. Gen. ex una parte & præd. Johannem Organ per nomen Johannis Organ de Stanton infra Hundred' de Highworth in Com. Wilts. Gen. ex altera parte fact. cujus alteram partem sigillo præd. Johannis Organ signat. idem Willielmus Phillips modo quer. hic in Cur. profert cujus dat. est eisdem die & anno conclusur. & agreaver. inter se quod ipsi præd. Richardus Organ & Johannes Organ forent deinde seiscit. in Communi non conjunctim de advocacione Ecclesiæ præd. scilicet quod dictus Richardus Organ staret & esset seiscit. & haberet teneret & gauderet unam medietat. dictæ advocacion. sibi & hæred. suis & quod dictus Johannes Organ staret & esset seiscit. & haberet teneret & gauderet alteram medietat. dictæ advocacion. sibi & hæred. suis Et quod dicti Richardus Organ & Johannes Organ & eorum separal. hæred. toties quoties dicta Ecclesia de Stanton deveniret vacua separalit. & respective præsentarent per separal. turnos alternis vicibus modo & forma sequen. videlicet quod dictus Richardus Organ & hæred. ejus poterint præsentare ad dictam Ecclesiam in primo turno adinde quando dicta Ecclesia contingeret primo & prox. vacare & dictus Johannes Organ & hæred. sui poterint præsentare ad dictam Ecclesiam quando eadem tunc prox. vacaret secunda vice, Anglice *The second Time*, & sic dicti Richardus Organ & Johannes Organ separaliter & eorum separales & respectivi hæredes in eorum separalibus turnis alternis vicibus sicut eadem Ecclesia aliquo tempore extunc deinceps deveniret vacua præsentarent vel possent præsentare clericos suos juxta ordinem & cursum, Anglice *Course*, præantea ut præferatur conclus. & agreat. prout per eandem Indentur. inter al. plenius apparet per quod iidem Richardus & Johannes fuer. seiscit. de advocacion. præd. ad præsentand. ad eandem Ecclesiam in forma

Quare Impedit by the Executors of Will. Phillips.

Declares upon an Agreement by Indenture between Jointenants to present by Turns.

Profert of Indenture.

præd. Et sic inde seisit. existen. præd. Richardus Organ post confessionem. indentur. præd. ad eandem Ecclesiam vacan. incipiend. primum turnum suum ac ut in primo turno suo apud Stanton prædict. præsentavit quendam Johannem Woodbridge Clericum suum qui ad præsentationem ipsius Richardi Organ fuit ibidem admitt. & institut. in eadem tempore pacis tempore Domini Jacobi nuper Regis Angl. primi Ac postea Ecclesia præd. vacavit per mortem præd. Johannis Woodbridge ibidem per quod præd. Johannes ad eandem Ecclesiam sic vacan. ut in secundo turno apud Stanton præd. præsentavit quendam Thomam Hotchkis Clericum suum qui ad præsentationem ipsius Johannis Organ fuit admitt. & institut. in eadem tempore pacis tempore Domini Caroli nuper Regis Angl. primi prædictoque Richardo Organ & Johanne Organ sic de advocacione præd. seisit. existen. prædictus Richardus Organ postea apud Stanton præd. obiit de tali statu suo inde seisit. per & post cujus mortem medietas advocacion. præd. cuidam Johanni Organ ut fratri & hæred. Richardi Organ descendebat per quod idem Johannes Organ frater de medietat. advocacion. præd. seisit. fuit ut de feodo & jure ad præsentand. in forma præd. Et sic inde seisit. existen. postea scilicet vicesimo quinto die Augusti Anno Regni dicti nuper Regis Caroli primi decimo quarto per quandam indentur inter ipsum Johannem Organ ex una parte & quendam Richardum Hippesley de Stone Easton in Com. Somerset Gen. consanguin. nepot. Anglice *Nephew*, præd. Johannis Organ fratris videlicet secundus filius Elizabethæ Hippesley Viduæ soror. naturalis dicti Johannis Organ fratris ex altera parte fact. apud Stanton præd. in Com. præd. cujus alteram partem sigillo præd. Johannis Organ fratris signat. idem Willielmus Phillipps modo quer. hic in Cur. profert cujus dat. est eisdem die & anno ult. supradictis & in consideration. naturalis amoris & affectus quos habuit & gessit erga dictum Richardum Hippesley ac in consideratione sanguinis inter eos & melior. præferement. & advancement. manutentionis & sustentation. Anglice *Livelihood*, dicti Richardi Hippesley & fratris ejus in eadem indentur. postea nominat. ipse præd. Johannes Organ Frater pro se & hæred. suis covenisset concessisset & agreasset ad & cum dicto Richardo Hippesley & hæred. suis quod ipse dictus Johannes Organ frater hæred. & assign. sui & quilibet eorum ac omnis & quælibet al. persona & personæ & eorum hæred. qui tunc fuer. vel extunc imposterum starent & essent seisit. de & in dicta medietat. advocacion. præd. starent & seisit. essent de eadem ad opus & usum dicti Richardi Hippesley & hæred. de corpore dicti Richardi Hippesley legitime procreand. & pro defect. tal. exitus ad opus & usum Roberti Hippesley fratris ipsius Richardi Hippesley & hæred. de corpore dicti Roberti Hippesley legitime procreand. & pro defect. tal. exitus ad opus & usum dicti Johannis Organ fratris & hæred. & assign. suorum imperpetuum & ad null. al. usus intention. vel proposita quæcunque prout per indentur. præd ultimo men-

First Presentment.

Vacancy per mortem.

Second Presentation.

Descent of one Moiety.

Another Agreement by Indenture.

Consideration.

Settled in Tail to the Uses declared.

mentionat. plenius apparet Virtute cujus quibus indentur. ac vigore ejusdem Actus in Parlamento Domini Henrici nuper Regis Angl octavi apud Westm in Com. Middlesex quarto die Februar. Anno Regni sui vicesimo septimo tent. edit. & provis. de usibus in possession. transferend. præd. Richardus Hippesley fuit seisit. de medietat. advocacion. præd. ut de feodo tallat. & jure remaner. inde in forma præd. scilicet ad præsentand. in forma præd. spectan. prædictoque Richardo Hippesley sic inde seisit. existen. postea apud Stanton præd. in Com. præd. obiit per & post cujus mortem dicta medietas advocacion. præd. descendebat cuidem Richardo Hippesley Ar. ut filio & hærad. de corpore prædicti Richardi Hippesley per quod idem Richardus Hippesley fil. de dicta medietat. advocacion. præd. seisit. fuit ut de feodo talliato & jure Et idem Richardus Hippesley filius sic inde seisit. existen. postea apud Stanton præd. obiit sine exitu de corpore suo exeunt. per & post cujus mortem dicta medietas advocacion. præd. descendebat cuidam Johanni Hippesley Ar. ut al. filio & hærad. de corpore prædicti Richardi Hippesley primo nominat. per quod præd. Johannes Hippesley de dicta medietat. advocacion. præd. seisit fuit ut de feodo & jure Et præd. Johannes Hippesley sic inde seisit. existen. idem Johannes Hippesley postea scilicet decimo sexto die Januar. Anno Regni Domini Caroli nuper Regis Angl. secundi vicesimo quarto apud Stanton præd. in Com. præd. per quoddam scriptum suum quod idem Willielmus Phillipps modo quer. sigillo præd. Johannis Hippesley signat. hic in Cur. profert cujus dat. est eisdem die & Anno dedit & concessit Francisco Symes Sen. de Kelmescott in Com. Oxon' Gen. & Willielmo Phillipps testatori de Eaton Hastings in Com. Berks Gen. Exec. & Assign. suis primam & proximam advocacionem donation. nomination. præsentation. & liberam dispositionem præd. Ecclesiæ parochial. de Stanton als. dict. Stanton Fitz-Herbert als. Stanton Fitz-Warren volens ac per idem scriptum suum concedens quod liceret & licitum foret ad & pro dictis Francisco Symes & Willielmo Phillipps testator. Executor. & assign. suis ad dictam Ecclesiam de Stanton Fitz-Herbert als. Stanton Fitz-Warren quomodocunque vel quomocunque per mortem resignationem deprivationem cession. permutation. dismissal. aut alio quocunque modo per quem eadem Ecclesia tunc primo & prox. contingeret vacare ullum honestum & doctum Clericum præsentare pro tunc prox. turno tantum prout per scriptum præd. plenius apparet Virtute cujus. concessio. iidem Franciscus Symes & Willielmus Phillipps testator de advocacion. Ecclesiæ de Stanton præd. possessionat. fuer. scilt. ad præsentand. ad eandem Ecclesiam cum tunc primo & prox. vacare contingeret Et sic inde possessionat. existen. prædictus Franciscus Symes postea apud Stanton præd. in Com. præd. obiit & præd. Willielmus Phillipps testator supervixit & fuit de advocacione præd. solus possessionat. per jus accrescendi, &c. prædictoque Willielmo Phillipps testatore sic inde possessionat. existen. Ecclesia præd. in vita præd. Willielmi Phillipps testator. vacavit

Grant of the next Avoidance to the Testator and Fr. Symes, their Executors and Assigns.

Fr. Symes, one of the Grantees dies and the Plaintiff's Testator survives.

per

The Vacancy
in the Testa-
tor's Life.

Testator
made his
Will, and the
Plaintiff his
Executor and
died.

Will prov'd.

Ayers the
Life of the
Grantor and
the Identity
of the Church.

Profert of the
Letters testa-
mentary.

Plea, Parson
Imparsonce.

Admit the
Vacancy and
that after
six Months
the Bishop
presented by
Lapse.

per mortem præd. Thomæ Hotchkis & adhuc vacan. existit Quæ
quidem vacatio Ecclesiæ præd. per mortem præd. Thomæ Hotchkis
est prima & proxima vacatio Ecclesiæ præd. post concession. præd.
eisdem Francisco Symes & Willielmo Phillipps per præfat. Johan-
nem Hippeley in forma præd. fact. & ea ratione ad prædictum
Willielmum Phillipps testator. in vita sua idoneam person. ad Ec-
clesiam præd. sic vacan. pertinuit præsentare Et præd. Episcopus
& Johannes Berrow ipsum Willielmum Phillipps testator. injuste
impediver. prædictusque Willielmus Phillipps testator Ecclesia
præd. sic vacan. ut præfertur existen. postea scilicet vicesimo primo
die Junii Anno Regni dict. Domini Regis nunc & Dominae Mariæ
nuper Reginae Angl', &c. sexto apud Stanton præd. in Com. præd.
condidit testamentum & ult. voluntat. suam ac per eandem consti-
tuit & ordinavit præd. Willielmum Phillipps modo quer. Executor.
testamenti sui præd. & postea ibidem obiit post cujus quidem
Willielmi Phillipps testator. mortem præd. Willielmus Phillipps
modo quer. accepit super se on. & execution. testamenti præd. & te-
stamentum illud in debita juris forma probavit videlt. apud Stan-
ton præd. & ea ratione ad ipsum Willielmum Phillipps modo quer.
idoneam person. ad Ecclesiam præd. sic vacan. ad præsens pertinet
præsentare & præd. Episcopus & Johannes Berrow ipsum Williel-
mum Phillipps modo quer. injuste impediunt unde idem Williel-
mus Phillipps modo quer. dicit quod deteriorat. est & dampnum
habet ad valenciam sexcent. libr. Et inde produc. sectam, &c. Cum
hoc quod idem Willielmus Phillipps modo quer. verificare vult
quod præd. Johannes Hippeley adhuc superstes & in plena vita
existit videlicet apud Stanton præd. in Com. præd. Et quod Ec-
clesia de Stanton als Stanton Fitz-Warren als. Stanton Fitz- Her-
bert est una eademque Ecclesia & non alia neque diversa Et pro-
fert hic in Cur. literas testatorias præd. Willielmi Phillips testa-
tor. per quas satis liquet Cur. hic ipsum Willielmum Phillipps
modo quer. fore Executor. testamenti præd. & inde habere admi-
nistrationem, &c.

Et prædictus Gilbertus Episcopus Sarum & Johannes Ber-
row Clericus per Johannem Carpenter Attorn. suum ven. & de-
fend. vim & injur. quando, &c. Et præd. Johannes Berrow dicit
quod ipse est parson. imparsonat. Ecclesiæ prædict. ex colla-
tione præd. Episcopi Et præd. Episcopus & Johannes Berrow ul-
tertius dicunt quod præd. Willielmus Phillipps executor actionem
suam præd. versus eos habere non debet quia dicunt quod præd. Ec-
clesia de Stanton als. Stanton Fitz-Warren als. Stanton Fitz- Her-
bert vacavit per mortem præd. Thomæ Hotchkis vicesimo die Sep-
tembris Anno Domini Millesimo sexcentesimo nonagesimo tertio
& sic vacan. existebat usque vicesimum tertium diem Aprilis Anno
Domini Millesimo sexcentesimo nonagesimo quarto quo die apud
Stanton præd. prædictus Episcopus eo quod adtunc sex menses post
vacationem ejusdem Ecclesiæ plene elaps. devolut fuer. ordinarius
loci ill. existen. præd. Johannem Berrow Clericum ad Ecclesiam ill.
tunc

tunc vacan. contulit prout ei bene licuit Et hoc parat. sunt verificare Unde pet. judic si præd. Willielmus Executor actionem suam præd. versus eos habere debeat, &c.

Et prædictus Willielmus Phillipps Executor dicit quod ipse per aliqua præallegat. ab actione sua præd. habend. præcludi non debet quia dicit quod bene & verum est quod prædicta Ecclesia de Stanton als. Stanton Fitz-Warren als. Stanton Fitz Herbert præd. per mortem præd. Thomæ Hotchkis præd. vicesimo die Septembris Anno Domini Millesimo sexcentesimo nonagesimo tertio supradict. vacavit prout præd. Episcopus & Johannes Berrow placitando allegaver. set idem Willielmus Phillipps Executor ulterius dicit quod post præd. vicesimum diem Septembris Anno Domini Millesimo sexcentesimo nonagesimo tertio supradict. & ante præd. vicesimum tertium diem Aprilis Anno Domini Millesimo sexcentesimo nonagesimo quarto infra sex menses post mortem præd. Thomæ Hotchkis scilicet decimo sexto die Octobris Anno Domini Millesimo sexcentesimo nonagesimo tertio præd. Willielmus Phillips testator per scriptum suum sigillo suo sigillat. cujus dat. est eodem decimo sexto die Octobris Anno Domini Millesimo sexcentesimo nonagesimo tertio apud Stanton præd. in Com. præd. præd. Episcopo adtunc præd. loci de Stanton als. Stanton Fitz-Warren als. Stanton Fitz-Herbert Ordinario præsentavit quendam Johannem Symes Artium Magistrum Clericum suum & præd. Episcopum adtunc & ibidem requisivit admittere & instituere eundem Johannem Symes ad Ecclesiam præd. sic vacantem per mortem prædict. Thomæ Hotchkis quem quidem Johannem Symes præd. Episcopus ad Ecclesiam præd. ad præd. præsentationem. præd. Willielm Phillips testator. adtunc & ibidem admittere & instituere penitus recusavit ac ipsum Willielmum Phillips testator. ad præsentand. impedivit Et hoc parat. est verificare Unde pet. judic. & dampna occasione inpedimenti prædict. necnon breve præd. Episcopo sibi adjudicari, &c.

Replies and admits the Time of that Vacancy.

But says that within the six Months, to wit, 16th Oct. 1693, the Testator by Writing presented J. Symes and requested the Bishop to admit him, who refused.

Et præd. Episcopus & Johannes Berrow dicunt quod bene & verum est quod præd. Willielmus Phillipps testator per scriptum suum sigillo suo sigillat. præsentavit præfat. Johannem Symes prout idem Willielmus Executor superius replicando allegavit Sed iidem Episcopus & Johannes Berrow ulterius dicunt quod postea & infra sex menses post vacationem, Ecclesiæ præd. scilicet prædicto decimo sexto die Octobris Anno Domini Millesimo sexcentesimo nonagesimo tertio supradicto præd. Johannes Symes apud Stanton præd. tulit præsentationem præd. præd. Episcopo & requisivit præd. Episcopum dare prædict. Johanni Symes paucos dies ad se præparand. fore examinat. de sufficientia sua in literatura ad habend. Ecclesiam præd. quodque prædict. Episcopus superinde super requisitionem præd. Johannis Symes adtunc & ibidem dedit licenc. præd. Johanni Symes abire & ibidem redire præd. Episcopo infra tres dies prox. sequen. fore examinat. de sufficientia sua præd. qui quidem

Rejoin and admit the Presentation, but say that J. Symes took it away, and desired Time to prepare himself for Examination, and never returned.

tres dies diu ante finem sex mensium post vacation. Ecclesie præd. per mortem prædict. Thomæ Hotchkis scilicet per spatium unius mensis finit. fuer. scilicet apud Stanton præd. Et præd. Episcopus & Johannes Berrow ulterius dicunt quod ipse idem Episcopus per præd. tres dies postea ibidem parat. fuit ad examinand. præd. Johannem Symes de sufficiencia sua præd. quodque præd. Johannes Symes nec infra prædict. tres dies nec unquam postea revenit nec se obtulit prædicto Episcopo fore examinat. de sufficiencia sua præd. per quod prædict. Ecclesia remansit vacua per spatium sex mensium & ultra post præd. vacationem per mortem præd. Thomæ Hotchkis super quo idem Episcopus contulit prædict. Johannem Berrow ad Ecclesiam ill. sic vacan. qui quidem Johannes Berrow postea in eadem Ecclesia debita juris forma induct. fuit absque hoc quod præd. Episcopus præd. Johannem Symes ad Ecclesiam præd. ad præsentationem præd. Willielmi Phillipps testator. admittere & instituere penitus recusavit prout præd. Willielmus Phillipps Executor superius allegavit Et hoc parat. sunt verificare Unde pet. judic. & quod præd. Willielmus Executor ab actione sua prædicta præcludatur, &c.

Traverses his
Refusal to ad-
mit J. Symes.

Surrejoinder
and Issue up-
on the Tra-
verse.

Continuances
per non mis.
breve.

Return of the
Postea.

Et prædict. Willielmus Phillipps Executor ut prius dicit quod præd. Episcopus præfat. Johannem Symes ad Ecclesiam præd. ad præsentationem præfati Willielmi Phillipps testator. admittere & instituere penitus recusavit prout idem Willielmus Phillipps Executor superius inde replicando allegavit Et hoc pet. quod inquiretur per patriam Et præd. Episcopus & Johannes Berrow similiter, &c. Ideo præcept. est vic. quod Venire fac. hic a die Sanctæ Trin. in tres septimanas duodecim, &c. per quos, &c. Et qui nec, &c. ad recogn', &c. Quia tam, &c. Ad quem diem hic ven. partes, &c. Et vic. non mis. breve ideo sicut prius præcept. est vic. quod Venire fac. hic a die Sancti Michaelis in tres septiman. duodecim, &c. ad recogn. in forma præd', &c. Ad quem diem hic ven. partes, &c. Et vic. non mis. breve ideo sicut prius præcept. est vic. quod Venire fac. hic in Octab. Purification. beatæ Mariæ duodecim, &c. ad recogn' in forma præd', &c. Ad quem diem jurata inter partes præd. de prædicto placito posit. fuit inde inter eas in respectum hic usque ad hunc diem scilicet a die Paschæ in quindecim dies tunc prox. sequen. Nisi Justic. Domini Regis ad Assisas in Com. prædicto capiend. assign. per formam statuti, &c. die Sabbati undecimo die Martii præteriti apud Novum Sarum in Com. præd. prius ven. Et modo hic ad hunc diem ven. prædictus Willielmus per Attorn. suum prædictum & præfat. Justic. ad Assisas coram, &c. mis. hic recordum suum in hæc verba Postea die & loco infracontent. coram Thoma Rokeby Mil. un Justic. Domini Regis ad placita co- ram ipso Rege tenend. assign. & Johanne Powel Mil. un. Justic. dict. Domini Regis de Banco Justic. ipsius Domini Regis ad Assisas in Com. Wilts capiend. assign. per formam statuti, &c. ven. tam infra-

infranominat. Willielmus Phillipps Gen. Executor testamenti & ult. voluntat. Willielmi Phillipps Gen. patris sui nuper defunct. quam infra-script. Gilbertus Episcopus Sarum & Johannes Berrow Clericus per Attorn. suos infracontent. Et jur. jurata unde infra fit mentio exact. similiter vener. qui ad veritatem de infracontent. dicend. elect. triat. & jurat. dicunt super sacramentum suum quod prædict. Gilbertus Episcopus Sarum infranominat. Johanne- Find the Bi-
nem Symes ad Ecclesiam infra mentionat. ad præsentationem shop did re-
præfat. Willielmi Phillipps testaor. admittere & instituere penitus fuse to admit
recusavit prout præd. Willielmus Phillipps Executor interius inde upon the
replicando allegavit Et jurator. præd. super sacramentum suum Plaintiff's
ulterius dicunt quod Ecclesia præd. est plena de præd. Johanne Presentation,
Berrow ex collatione præd. Gilberti Episcopi Sarum prout interius and the
per ipsum allegatur quodque Ecclesia præd. est & tempore quo, &c. Church full
fuit valoris Centum & viginti librar. per annum in omnibus exiti- upon the Bi-
bus ultra reprisas Et jurator. præd. assidunt dampna ipsius Williel- shop's Colla-
mi Phillipps Executor. pro mis. & custag. suis per ipsu circa secta tion, and the
suam in hac parte apposit. ad quadragint. solid. Ideo null. habito yearly Value
respectu ad prædictos quadragint. solidos de dampnis & mis. & 120 l.
custag. præd. per jur. præd. occasione impedimenti præd. assel.
quia hujusmodi dampna aut mis. per legem terræ in hoc casu nul-
latenus sunt adjudicand. cons. est quod prædictus Willielmus Phil- Judgment
lipps Executor recuperet versus præfat. Episcopum Sarum & Jo- and awarding
hannem Berrow præsentationem suam Ecclesiæ præd. & dampna a Writ to the
sua ad valorem Ecclesiæ ill. pro dimid. unius anni quæ se attin- Bishop.
gunt ad sexagint. libr. per jur. præd. in forma præd. assel. Et ha-
beat breve Archiepiscopo Cantuar. totius Angl. Primat. & loci ill. Metropolitan. eo quod prædictus Episcopus Sarum est pars, &c.
quia prædictus Johannes Berrow ad eandem Ecclesiam ad colla-
tionem prædicti Episcopi Sarum admissus & institutus ac in eadem
inductus existit ad eundem Johannem Berrow ab Ecclesia ill. amo-
vend. & ad Ecclesiam ill. ad præsentationem præd. Willielmi
Phillipps Executor. idoneam personam admittend. Et prædict. Episc. Misericordia.
Sarum & Johannes Berrow in Misericordia, &c. Postea scilicet die
lunæ prox. post tres septiman. Sancti Michaelis isto eodem termino
coram Domino Rege apud Westmonasterium ven. præd. Episcopus & Johannes Berrow per Adrian. Moore Attorn. suum &
dicunt quod in record. & process. præd. acetiam in reddition. ju- Errors as-
dic. præd. manifeste est erratum in hoc videlicet quod per record. sign'd.
præd. apparet quod iudicium præd. in forma præd. reddit. reddit.
fuit pro præfat. Willielmo Phillipps versus præfat. Episcopum &
Johannem Berrow ubi per legem terræ hujus Regni Angl. iudicium
ill. reddi debuisset pro præfat. Episc. & Johanne Berrow versus eun-
dem Willielmum Phillipps ideo in eo manifeste est erratum Erratum
est etiam in hoc videlicet quod record. præd. coram Domino Rege
nunc hic missum defectivum existit in hoc videlicet quod breve
originale & retorni ejusdem inter partes præd. in placito præd. ex-
tra

Certiorari.

Quare Impe-
dit returned.

tra record. ill. totaliter omittuntur & in Custodia Custodis brevium dicti Domini Regis nunc de Banco adhuc remanent eidem Domino Regi minime certificat. Et pet. iidem Episcopus & Johannes Berrow breve dicti Domini Regis nunc Custod. brevium dicti Domini Regis nunc de Banco prædict. dirigend. ad breve præd. una cum retorn. ejusdem brevis dicto Domino Regi certificand. Et eis conceditur, &c. per quod mandat. est Willielmo Thursby Armig. Custod. brevium Domini Regis de Banco præd. quod scrutat. brevibus original. Com. Wilts de termino Sanctæ Trinitatis Anno Regni dicti Domini Regis nunc octavo in Custodia sua de recordo existen. quid de brevi præd. in eisdem invenerit unacum integro retorn. ejusdem brevis adeo plenæ & integrè prout in Custodia sua remanent Domino Regi indilate ubicunque, &c. mittat unacum brevi dicti Dom. Regis sibi inde direct', &c. Qui quidem Custos brevium virtute brevis illius sibi inde direct. eidem Domino Regi certificavit quod scrutatis brevibus originalibus Com. sui Wilts de præd. termino Sanctæ Trinitatis Anno Regni sui octavo in Custodia sua de recordo affilat. habetur quoddam breve originale inter partes præd. de placito. præd. in Custodia sua de præd. termino affilat. tenor cujus quidem brevis unacum retorn. ejusdem sequitur in hæc verba Gulielmus tertius Dei Gratia Angl. Scotiæ Franciæ & Hiberniæ Rex Fidei Defensor, &c. Vic. Wilts salutem Præcipe Gilberto Episcopo Sarum & Johanni Berrow Clerico quod juste & sine dilacione permittant Willielmum Phillips Executor. testamenti Willielmi Phillips patris sui nuper defunct. præsentare idoneam personam ad Ecclesiam de Stanton quæ vacat & ad suam spectat donationem ut dicit & unde queritur quod prædicti Episcopus & Johannes cum injuste impediunt Et nisi fecerit & prædictus Executor fecerit te secur. de clam. suo prof. tunc sum. per bonos sum. prædictos Episcopum & Johannem quod sint coram Justic. nostris apud Westm. a die Sanctæ Trinitatis in quindecim dies ostens. quare non fecerint Et habeas ibi sum. & hoc breve Teste Thoma Archiepiscopo Cantuar. & cæteris Custodibus & Justic. Regni apud Westm. vicesimo octavo die Maii Anno Regni nostri octavo Hale Effon. pro Episcopo adjorn. usque tres Michaelis Idem dies pro Clerico Effon. pro Clerico adjorn. usque crastinum Martini Idem dies pro Episc. W. Hall pleg. de prof. Johannes Doe & Richardus Roe sum. Tho Eyre Jo. Russel Edvardus Somner Ar. Vic. Quod quidem breve de Certiorari unacum retorn. inde inter Record. sine die istius termini affilatur Et super hoc præd. Willielmus Phillips per Josephum Sherwood Attorn. suum statim hic in Cur. similiter ven. Et superinde præd. Episcopus & Johannes Berrow (ut prius) dicunt quod in record. & process. præd. aceriati in redditione judicii præd. manifeste est erratum allegando Error. præd. per ipsos in forma præd. superius allegat. Et pet. quod judicium præd. ob error. præd. & al. in record. & process. præd. existen. revocetur annulletur & penitus pro nullo habeatur Et quod ipsi

ipsi ad omnia quæ occasione iudicii prædicti amiser. restituantur
 Et quod Cur. dicti Domini Regis nunc hic procedat ad examina-
 tion. tam record. & process. præd. quam materiarum præd. supe-
 rius pro erroribus assign. quodque præd. Willielmus ad errores
 præd. rejungat. Super quo idem Willielmus Phillipps dicit quod nec
 in record. & process. præd. nec in redditione iudicii præd. in ullo
 est erratum Et similiter pet. quod Cur. dicti Domini Regis nunc
 hic procedat ad examination. tam record. & process. præd. quam
 materiarum prædicti. superius pro error. assign. Et quod iudicium
 præd. in omnibus affirmetur Sed quia Cur. dicti Domini Regis
 nunc hic de iudicio suo de & super præmissis reddend. nondum
 advisatur dies inde dat. est partibus præd. coram Domino Rege
 usque Judicium af-
ubi- firmetur.
 cunque, &c. de iudicio suo inde audiend. eo quod Cur. dicti Do-
 mini Regis nunc hic inde nondum, &c.

*Placita coram Domina Regina apud Westm.
 de termino Sancti Michaelis Anno Reg-
 ni Domine Annæ nunc Regine Angliæ,
 &c. tertio. Rotulo 144.*

Goddard versus Smith, & al'. Vide fo. 21.

Middl. ff. **M**emorandum, Quod als. scilt. termino Sanctæ
 Trinitatis ultimo præterito coram Domina
 Regina apud Westm. venit Richardus God-
 dard per Henricum Wright Attorn suum
 Et protulit in Cur. dictæ Domine Regine tunc ibidem quandam
 billam suam versus Richardum Smith & Christopherum Preston
 in Custod. Mar', &c. de placito transgr. super casum Et sunt pleg.
 de proseguend. ff. Johannes Doe & Richardus Roe quæ quidem
 billa sequitur in hac verba ff. Middlesex ff. Richardus Goddard
 queritur de Richardo Smith & Christophero Preston in Custod.
 Mar Marefc. Domine Regine coram ipsa Regina existen. pro eo
 videlicet quod cum præd. Richardus Goddard bonus verus fidel.

Declaration
in Case upon
Conspiracy,
for a false and
malicious In-
dictment of
Barrettry. Inde
acquiescat.
futi.

Indictment at
Hick's-Hall.

pacificus & honest. Dominæ Reginae nunc subdit. & ligens existit & bonorum nominis famæ reputation. conversation. gestur. condition. fuit ac ut bonus verus fidel. pacificus & honest. ligens & subdit. dictæ Dominæ Reginae nunc absque ullo scandalo imputation. sive macula existens Et ut Barectator seu pacis dictæ Dominæ Reginae perturbator seu suspition. hujusmodi criminis a tempore natiuitat. suæ hucusque inter vicinos suos & al. subdit. dictæ Dominæ Reginae quibus idem Richardus Goddard cognit. fuit se minime gessit & gubernavit & ratione honest. & quiet. conversation. suæ præd. per totum tempus prædict. magnam credenc. & estimation. necnon diversa grandia lucra & proficua licite & honeste pro sustentation. sua & familiæ suæ de vicinis suis & al. dictæ Dominæ Reginae subdit. cum quibus idem Richardus Goddard commercium habuisset lucravit & acquisiuit Dicti tamen Richardus Smith & Christopherus præmissorum non ignari sed machinantes & malitiose intendentes. ipsum Richardum Goddard non solum de bon. nomine fama & estimation. suis præd. deprivare verum etiam ipsum Richardum Goddard in scandalum ignominiam & opprobrium publicum inducere ut ea ratione subdit. dictæ Dominæ Reginae a consortio ipsius Richardi Goddard se subtraherent & cum eo aliquantulum. intromittere sive commercium habere omnino cessarent & abstinerent decimo tertio die Septembris Anno Regni dictæ Dominæ Annæ nunc Reginae Angl', &c. primo apud Paroch. Sancti Jacobi Clerkenwell in Com. præd. conspiracy. inter se adtunc & ibidem præhabita falso & malitiose absque aliqua causa seu colore hujusmodi criminis per ipsum Richardum Goddard perpetrat. ad ipsum Richardum Goddard ut Barectator. & publicum pacis dictæ Dominæ Reginae perturbator. indictari causand. iidem Richardus Smith & Christopherus apud Paroch. præd. in Com. præd. in prosecution. & execution. malitiose intention. necnon conspiracy. præd. ad general. quarterial. Session. pacis Dominæ Reginae tent. pro Com. Middlesex apud Hicks's-Hall in St. John-street in Com. præd. coram Johanne Bennet, Henrico Hawley & Josepho Offley Ar. & al. sociis suis Justic. dictæ Dominæ Reginae ad pacem in Com. præd. conservand. necnon ad diversa felon. transgr. contempt. & malefacta in eodem Com. perpetrat. audiend. & terminand. assign eundem Richardum Goddard ea intention. ad defamand. eundem Richardum Goddard absque ulla legitima vel vera causa per nomen Richardi Goddard nuper de Paroch. Sancti Jacobi Clerkenwell in Com. Middlesex Yeom. de eo quod idem Richardus Goddard primo die Januarii Anno primo supradicto & diversis al. diebus & vicibus tam antea quam postea apud Paroch. præd. in Com. præd. fuisset & adtunc fuit communis Barectator ac communis assiduus & publicus pacis dictæ Dominæ Reginae nunc perturbator necnon communis & turbulent. calumpniator ac litium & discordiarum inter vicinos suos quiet. & honest. seminator adeo ut divers. lites controversias necnon jurgia rixas & pugnas apud Paroch. præd. in Com. præd. & alibi

alibi in dicto Com. Middlesex inter divers. dicta Domina Regina ligeos & subdit. movisset procurasset & incitasset in magnam pacis dicta Domina Regina nunc perturbation. in malum exemplum omnium aliorum in hujusmodi casu delinquen. ac contra pacem dicta Domina Regina nunc coron. & dignitat. suas, &c. falso & malitiose indictari fecer. & procuraver. ac indictament. ill. versus ipsum Richardum Goddard falso & malitiose prosecut. fuer. & prosecut. esse causaver. quousque dicta Domina Regina nunc indictament. ill. coram ea postea certis de causis venire fec. terminand. & praecept. fuit vic. Com. praed quod non omitt', &c. quin eum venire fac. ad respondend', &c. & ipse idem Richardus Goddard postea scilicet termino Sancti Michaelis Anno Regni dicta Domina Regina nunc secundo in Cur. Domina Regina coram ipsa Regina eadem Cur. apud Westm. existen. secundum legem & consuetudinem hujus Regni Angl. debito & legitimo modo inde exonerat. fuit Quorum quidem praemissorum versus ipsum Richardum Goddard per praed. Richardum Smith & Christopherum Preston in forma praed. publicat. facti. exhibit. & prosecut. praetextu idem Richardus Goddard non solum in bonis nomine fama credenc. & reputation. suis praed. multipliciter laesus & deteriorat. & in corpore suo inquietat. & debilitat. existit verum etiam diversas ingentes denar. summas in & circa seipsum de indictament. ill. acquietand. & exonerand. & innocenc. suam vindicand. expendere & erogare coact. fuit in discredenc. maximam ac extremam depauperation. ipsius Richardi Goddard & ad dampnum ipsius Richardi Goddard viginti librarum Et inde produc. sectam, &c.

Et modo ad hunc diem scilicet diem Lunae prox. post tres septimanas Sancti Michaelis isto eodem termino usque quem diem praed. Richardus Smith & Christopherus habuer. licenc ad billam praed. interloquend. & tunc ad respondend', &c. coram Domina Regina apud Westm. venit tam praed. Richardus Goddard per Attorn. suum praed. quam praed. Richardus Smith & Christopherus per Edmundum Butler Attorn suum Et iidem Richardus Smith & Christopherus defend. vim & injur. quando, &c. Et dicunt quod ipsi in nullo sunt culpabiles de praemissis superius eis imposit. prout praed. Richardus Goddard superius versus eos queritur Et de hoc pon. se super patriam Et praed. Richardus Goddard similiter, &c. Ideo ven. inde jur. coram Domina Regina apud Westm. die Lunae prox. post crastinum animarum Et qui nec, &c. ad recogn', &c. quia tam, &c. idem dies dat. est partibus praed. ibidem, &c.

Remov'd by
Certiorari.

Discharged.

Not guilty
pleaded.

*Placita coram Domina Regina apud Westm.
de termino Sanctæ Trinitatis Anno Reg-
ni Domine Annæ nunc Regine Angliæ,
&c. tertio. Rotulo 2II.*

Tenant *versus* Gouldwin. Vide fo. 37.

Middl. ff.

Memorandum, Quod als. scilicet termino Pas-
chæ ultimo præterito coram Domina Re-
gina apud Westm. venit Robertus Tenant
per Johannem Rice Attorn. suum Et pro-
tulit in Cur. dictæ Domine Regine tunc ibidem quandam billam
suam versus Lucam Gouldwin in Custod. Mar' &c. de placito
transgr. super casum Et sunt pleg. de prosequend. scilicet Johannes
Doe & Richardus Roe. Quæ quidem billa sequitur in hæc verba ff.
Middlesex ff. Robertus Tenant queritur de Luca Gouldwin in
Custod. Mar. Marefc. Domine Regine coram ipsa Regina existen.
pro eo videlicet quod cum ipse idem Robertus primo die Octobris
Anno Regni Domine Annæ nunc Regine Angl', &c. primo & ab-
inde semper hucusque possessionat. fuisset & adhuc possessionat ex-
istit de uno Mesuagio scituat. jacen. & existen. in Frith-street in
Paroch. Sanctæ Annæ infra libertat. Westm. in Com. Middlesex
præd. pro quodam termino annorum nondum finit. ac in cellario
suo parcell. Mesuag. sui præd. reponere & conservare solebat car-
bon. ac illupulat. cervisiæ copias pro usu familiæ suæ necnon ad
vendend. & merchandizand. diversis personis quæ de ipso commo-
ditat. præd. emere solebant in Mesuagio suo præd. ad ipsius Rober-
ti non modicum proficuum & utilitat. Quod quidem cellarium
contigue adjacet & per totum tempus præd. contigue adjacebat
Mesuagio præd. Lucæ in Paroch. præd. & de forica pareell. præd.
Mesuagii præfat. Lucæ separari & vallari solebat per murum cras-
sum & compactum qui ad dictum Mesuagium præfat. Lucæ pertinet
& per præfat. Lucam per totum tempus præd. de jure debuit repa-
rari præfat. tamen Lucas præmissorum non ignarus sed machinans
& fraudulent. intendens ipsum Robertum in hac parte minus rite
prægravare & ipsum Robertum de usu & commoditate cellarii Me-
suagii sui præd. totaliter deprivare & de proficuo commercii sui præd.
impedire eodem primo die Octobris Anno Regni dictæ Domine Re-
gine supradicto & abinde semper hucusque murum præd. licet
sæpius requisit. eundem reparare scilicet per ipsum Robertum eodem
primo

Case for not
repairing a
partition
Wall, where-
by the Plain-
riff was pre-
judic'd.

Averment of
the Usage.

Breach.

primo die Octobris in Paroch. præd. tam negligent. custodivit & reparavit quod ob defectum debet. curæ & reparation' ejusdem Muri fræditates & sordida foricæ præd. de eadem forica per decasus & fraction' muri præd. in cellar. præd. ejusdem Roberti fluebant & cellarium præd. inundabant scilicet in paroch. præd. per totum tempus præd. per quod ipse idem Robertus usum cellarii sui & proficuum commercii sui præd. per totum tempus præd. perdidit & amisit Unde idem Robertus dicit quod ipse deteriorat. est & dampnum habet ad valenciam centum librarum Et inde producit sectam, &c.

Plaintiff damaged.

Et modo ad hunc diem scilicet diem Veneris prox. post crastinum Sanctæ Trinitatis isto eodem termino usque quem diem præd. Lucas habuit licentiam ad billam præd. interloquend. & tunc ad respondend', &c. coram Domina Regina apud Westm. venit præd. Robertus per Attorn. suum præd. Et petit quod præd. Lucas ad narrationem suam præd. respondeat Et præd. Lucas licet ad eundem diem solemniter exact. non ven. nec aliquid dicit in barram sive præclusionem actionis prædictæ Roberti præd. per quod idem Robertus remanet inde versus eum indefens. Ob quod prædictus Robertus dampna sua versus præfat. Lucam recuperare debeat Sed quia Cur. dictæ Domine Regine nunc hic coram ipsa Regina incognit. existit quæ dampna prædictus Robertus occasione præmissorum in hac parte sustinuit — Ideo præcept. est vic. quod per sacramentum duodecim proborum & legalium hominum de balliva sua diligent. inquirat quæ dampna prædictus Robertus tam occasione præmissorum quam pro misis & custagiis suis per ipsum circa sectam suam in hac parte apposit. sustinuit Et inquisition. quam inde ceperit Domina Regina apud Westm. die Lunæ prox. post tres septiman. Sancti Michaelis sub sigillo suo & sigillis eorum per quorum sacram. inquisition. ill. ceperit mittat unacum brevi Domine Regine ei inde direct. idem dies dat. est eidem Roberto ibidem, &c.

Judgment per Nil dicit.

Voll. II.

Hhh

Placita

*Placita coram Domina Regina apud Westm.
de termino Sancti Hillarii Anno Regni
Domine Annæ nunc Regine Angliæ,
&c. tertio. Rotulo 102.*

Brook *versus* Hustler. Vide fo. 56.

Angl. ff. **D**OMINA REGINA mandavit dilecto & fideli suo Thomæ Trevor Mil. Capital. Justic. suo de Banco breve suum clausum in hac verba ff. Anna Dei Gratia Angliæ Scotiæ Franciæ & Hiberniæ Regina Fidei Defensor, & Dilecto & fidel. suo Thomæ Trevor Mil. Capital. Justic. suo de Banco salutem. Quia in recordo & processu accitans in redditione iudicii loquelæ quæ fuit in Cur. nostra coram vobis & sociis vestris Justic. nostris de Banco per breve nostrum inter Willielmum Hustler Richardum Osbaldeston Mil. & Willielmum Osbaldeston Armig. & Thomam Brook nuper de Overfloston in Com. Eborum Yeom. de debito septuagint. & novem solid. & undecim denar. quod iidem Willielmus Richardus & Willielmus a præfat. Thoma exigunt ut dicitur Error interven. manifest. ad grave dampnum ipsius Thomæ sicut ex querela sua accepimus Nos error. si quis fuit modo debito corrigi & partibus præd. plenam & celerem justic. fieri volentes in hac parte vobis mandamus quod si iudicium inde reddit. sit tunc record. & process. præd. cum omnibus ea tangen. nobis sub sigillo vestro distincte & aperte mittatis & hoc breve ita quod ea habeamus a die Paschæ in quindecim dies ubicunque tunc fuerimus in Angl. ut inspect. record. & process. præd. ulterius inde pro error. illo corrigend. fieri fac. quod de jure & secundum legem & cons. Regni nostri Angl. fuerit faciend. Teste me ipsa apud Westm. secundo die Martii Anno Regni nostri secundo

Hungerford.

Respons. Thomæ Trevor Mil. Capital. Justic. infranominat. Record. & process. loquelæ unde infra fit mentio cum omnibus ea tangen. coram Domina Regina ubicunque, &c. Ad diem infracentent. mitto in quodam recordo huic brevi annex. prout interius mihi præcipitur.

Tho. Trevor.

Placita

Placita Irrotulat. apud Westm. coram Thoma Trevor Mil' & sociis suis Justic. Dominæ Reginæ de Banco de termino Sancti Hilarii Anno Regni Dominæ Annæ Dei Gratia Angliæ Scotiæ Franciæ & Hiberniæ Reginæ Fidei Defensor, &c. secundo. Rotulo 1228.

Ebor' ff. Thomas Brooke nuper de Overflocton in Com. præd. Yeom. sum. fuit ad respondend. Willielmo Hustler Mil. Richardo Osbaldeston Mil. & Willielmo Osbaldeston Armig. de placito quod reddat eis septuagint. & novem solid. & undecim denar. quos eis debet. & injuste detinet, &c. Et unde iidem Willielmus Hustler Richardus & Willielmus Osbaldeston per Robertum Hopkinson Attorn. suum dicunt quod Dominus Jacobus primus nuper Rex Angl. fuit seifit. in jure coronæ suæ Angl. ut de feodo & jure de & in Cur. let. & vis. franc. pleg. cum pertin. & tot. & quolibet quod ad Cur. let. seu vis. franc. pleg. pertinebat seu quovismodo spectabat seu pertinere aut spectare debuit infra maner. sive Domin. Vill. seu Hamlet. de West Bretton Cawthorne Overflocton & Nether Flocton in præd. Com. Eborum ac infra præcinct. eorundem maneriorum sive Dominic. Vill. & Hamlet. & eorum cujusslibet in præd. Com. Ebor. existen. vel non existen. parcell. Ducat. Lancastr. de omnibus residen. & inhabitant. infra maner. sive Dom. Vill. & Hamlet. præd. ac infra præcinct. eorund. maner. sive Dom. Vill. & Hamlet & eorum cujusslibet sive eorum alicujus præd. Cur. let. vis. & franc. pleg. præd. bis per ann. tenend. infra maner. sive Dom. Vill. & Hamlet. præd. aut eorum aliquod vel infra præcinct. eorundem maneriorum sive Dom. Vill. & Hamlet. vel eorum alicujus ad tal. dies & tempora in anno qual. prædictus Dominus Rex Jacobus primus heræd. vel assign. sui vider. seu vider. opportun. convenien. & necessar. secundum legem & consuetud. hujus Regni Angl. coram Seneschallo ejusdem Domini Regis Cur. illius aut deputat. hujusmodi Seneschalli pro tempore existen. Et sic inde seifit. existen. nuper Rex Jacobus primus postea per litteras suas paten. sub magno sigillo Angl. ac sub sigillo Ducat. Lancastr. similiter confect. geren. dat. apud Westm. in Com. Middlesex vicesimo nono die Junii Anno Regni sui Angl. decimo tertio ac Scot. quadragesimo octavo quas iidem Willielmus Hustler Richardus & Willielmus Osbaldeston hic in Cur. proferunt tam pro & in cons. sum. viginti solid. legalis monetæ Angl. ad recept. Scaccarii sui apud Westm. ad usum suum per dilect. subdit. suum Georgium Wentworth de Bulkisse in West Bretton in Com. Eborum Gen. bene & fidelit. solut Unde idem nuper Dominus Rex fatebatur se plenarie esse satisfact. & persolut. quam pro diversis al. bonis causis & cons. eundem Dom. Regem specialit. moven. de gra. sua speciali ac ex certa scientia & ex mero motu suis dedit & concessit pro se heræd. & successor. suis præfat Georgio Wentworth heræd. & assign. suis de cætero imperpetuum quod haberent teneant & gauderent ac habere tenere & gaudere valerent & possent infra

Declaration
for an Amer-
ciament in a
Court-Leet.

Seisin of King
James I. in a
Court-Leet.

Grant thereof
to Went-
worth by Let-
ters Patent
under the
Dutchy-Seal.

To be held
twice a Year
at such Days
as the Grants
should think
fit.

Grantee seised
and held se-
veral Courts,
and died.

Discent to his
Son and Heir,
who was
seised,

And died
without issue,
whereby they
descended to
his Brother.

infra maneria sive Dom. Vill. seu Hamlet. de West Bretton Cawthorne Over Flocton & Nether Flocton & eorum quodlibet in dicto Com. Eborum ac infra præcinct. eorundem maneriorum sive Dominic. Vill. & Hamlet. & eorum cujusbet in dicto Com. Eborum existen. vel non existen. parcell. Ducat. Lancastriæ præd. Cur. let. & vis. franc. pleg. de omnibus tenent. residen. & Inhabitan. & al. residen. venien. infra Dominia sive maneria Vill. & Hamlet. præd. ac infra præcinct. eorundem maneriorum sive Dominiorum Vill. & Hamlet & eorum cujusbet sive eorum alicujus præd. Cur. let. & vis. franc. pleg. bis per ann. de tempore in tempus tenend. infra maneria sive Dominia Vill. & Hamlet. præd. aut eorum aliquod vel infra præcinct. eorundem maneriorum sive Dominiorum Vill. & Hamlet. vel eorum alicujus eisdem locis diebus & temporibus quibus præd Georgius Wentworth hæred. vel assign. sui vider. seu vider. opportunum convenien. & necessar. secundum legem & consuetudinem hujus Regni Angl. coram Seneschallo ejusdem Georgii Wentworth hæred. & assign. suorum pro tempore existen. seu coram Deputat. hujusmodi Seneschalli pro tempore existen. Et tot. & quicquid ad Cur. let. seu vis. franc. pleg. pertinuit seu quoquomodo spectabat seu pertinere aut spectare debuit quovismodo Acetiam omnia & singula amerciamenta fines forisfactur. pœnas pœnalitat perquisit. profic. libertat. præhemenen. privileg. jura & jurisdiction. quæcunque ad præd. Cur. let. seu vis. franc. pleg. ad dictum Dom. Regem aut Successor. suos quoquomodo pertinere poterint aut deberent Quarum quidem literarum patentium prætextu præd. Georgius Wentworth seisit. fuit ut de feodo & jure de & in Cur. let. & vis. franc. pleg. præd. cum pertin. Et diversas Cur. & vis. franc. pleg. infra Maneria sive Dominia Vill. seu Hamlet. de West Bretton Cawthorne Over Flocton & Nether Flocton præd. secundum donation. & concess. præd. in literis Paren. præd. content. tenuit Et præd. Georgius sic de Cur. let. & vis. franc. pleg. præd. cum pertin. seisit. existen. postea scilicet secundo die Julii Anno Domini Millesimo sexcentesimo tricesimo octavo apud Nether Flocton præd. obiit post cujus mortem præd. Cur. let. & vis. franc. pleg. præd. cum pertin. descendebant Willielmo Wentworth Gen. ut filio & hæred. ipsius Georgii per quod præd. Willielmus Wentworth filius & hæres præd' Georgii seisit. fuit ut de feodo & jure de & in Cur. let. & vis. franc. pleg. præd. cum pertin. Et sic inde seisit. existen. idem Willielmus postea scilicet quarto die Martii Anno Domini Millesimo sexcentesimo tricesimo nono apud Nether Flocton præd. obiit sine aliquo exitu de corpore suo exeun. post cujus mortem præd. Cur. let. & vis. franc. pleg. præd. cum pertin. descendebant Thomæ Wentworth Ar. postea Bar. ut fratri & hæred. præd. Willielmi Wentworth per quod præd. Thomas Wentworth ut frater & hæres præd. Willielmi Wentworth fuit seisit. de & in Cur. let. & vis. franc. pleg. præd. cum pertin. ut de feodo & jure Et sic inde seisit. existen.

existen. idem Thomas Postea scilicet primo die Aprilis Anno Domini Millesimo sexcentesimo septuagesimo sexto apud Nether Flocton præd. obiit sine aliquo exitu de corpore suo exen. post cujus mortem præd. Cur. let. & vis. franc. pleg. cum pertin. discendebant Matthæo Wentworth Bar. ut fratri & hæred. præd. Thomæ Wentworth per quod præd. Matthæus ut frater & hæres præd. Thomæ Wentworth fuit seisit. de & in præd. Cur. let. & vis. franc. pleg. præd. cum pertin. ut de feodo & jure Et sic inde seisit. existen idem Matthæus postea scilicet secundo die Augusti Anno Domini Millesimo sexcentesimo septuagesimo octavo apud Nether Flocton præd. obiit post cujus mortem præd. Cur. let. & vis. franc. pleg. cum pertin. discendebant Matthæo Wentworth Bar. ut filio ut hæredi præd. Matthæi Wentworth fratris per quod prædictus Matthæus Wentworth filius fuit seisit. de & in præd. Cur. let. & vis. franc. pleg. cum pertin. ut de feodo & jure Et præd. Matthæus sic inde seisit. existen. postea scilicet octavo die Decembris Anno Domini Millesimo sexcentesimo nonagesimo tertio per quandam indentur. bargainæ & vendition. inter ipsum Matthæum Wentworth filium ex una parte & præd. Willielmum Hustler Richardum Osbaldeston & Willielmum Osbaldeston ex altera parte apud Nether Flocton præd. fact. cujus quidem alteram partem sigillo ipsius Matthæi Wentworth filii sigillat. iidem Willielmus Hustler Richardus & Willielmus Osbaldeston hic in Cur. proferunt cujus dat. est eisdem die & anno in consideration. quinque solid. ei præmanibus solut. per præd. Willielmum Hustler Richardum & Willielmum Osbaldeston bargainizavit & vendidit eisdem Willielmo Hustler Richardo & Willielmo Osbaldeston præd. Cur. let. & vis. franc. pleg. cum pertin. habend. & tenend. eisdem Willielmo Hustler Richardo & Willielmo Osbaldeston Executor. Administrator. & Assign. suis a die dat. Indentur. præd. usque finem & terminum unius Anni extunc prox. sequen. & plenar. complend. & finiend. Virtute cujus quidem bargainæ & vendition. ac vigore statuti de usibus in possession. transferend. in ea parte edit. & provis. iidem Willielmus Hustler Richardus & Willielmus Osbaldeston fuer. possession. de Cur. let. & vis. franc. pleg. præd. pro termino illo Et sic inde possessionat. existen. prædictoque Mattheo Wentworth filio de reversione Cur. let. & vis. franc. pleg. præd. cum pertin. ut de feodo & jure seisit. existen. postea scilicet nono die Decembris Anno Domini Millesimo sexcentesimo nonagesimo tertio supradicto apud Nether Flocton. præd. per quandam aliam indentur. inter ipsum Matthæum Wentworth filium ex una parte & prædicto Willielmum Hustler Richardum Osbaldeston & Willielmum Osbaldeston ex altera parte fact. cujus quidem alteram partem sigillo ipsius Matthæi Wentworth filii sigillat. iidem Willielmus Hustler Richardus & Willielmus Osbaldeston hic in Cur. proferunt cujus dat. est eisdem die & anno supradictis ipse idem Matthæus Wentworth filius relaxavit eisdem Willielmo Hustler Richardo

Who died also without issue, whereby they descended to his Brother,

After whose Death they descended to his Son, who entered.

And by Lease and Release conveyed to the Plaintiffs.

chardo & Willielmo Osbaldeston hered. & assign. suis tot. statum
 jus titulum & interesse ipsius Matthai Wentworth filii de & in
 Cur. let. & vis. franc. pleg. præd. cum pertin. Quorum quidem
 præmissorum prætextu præd. Willielmus Hustler Richardus & Wil-
 lielmus Osbaldeston fuer. & adhuc existunt seisis. de & in Cur. let. &
 vis. franc. pleg. præd. cum pertin. ut de feodo & jure præd. quodque
 Thomas Brooke. vicesimo quarto die Aprilis Anno Domini Mille-
 simo septingentesimo tertio & diu antea fuit residen. & inhabitan.
 apud Over Flocton præd. infra jur. let. & vis. franc. pleg. præd. &
 debuit sectam facere ad Cur. vis. franc. pleg. præd. ipsique Wil-
 lielmo Hustler Richardo & Willielmo Osbaldeston de Cur. let. &
 vis. franc. pleg. præd. cum pertin. sic ut præfertur seisis. existen.
 Cur. let. & vis. franc. pleg. præd. tent. fuit apud Nether Flocton
 præd. infra Maneria & Dom. præd. dicto vicesimo quarto die Apri-
 lis Anno Domini Millesimo septingentesimo tertio coram Richar-
 do Wiston Armig. Seneschallo eorundem Willielmi Hustler Ri-
 chardi & Willielmi Osbaldeston Cur. illius de qua quidem Cur. sic
 tenend. debita notitia dat. fuit residen. & inhabitan. infra Maner.
 Dom. Vill. & Hamlet. præd. scilicet apud Nether Flocton præd.
 quodque præd. Thomas Brooke ad Cur. ill. sectam suam non fec.
 nec comperuit sed default. fec. per quod ad eandem Cur. per Jura-
 tores qui ad inquirend. & præsentand. ea que ad Cur. let. & vis.
 franc. pleg. pertinuer. in eadem Cur. jurat. & onerat. fuissent præ-
 sentat. fuit super sacramentum suum quod præd. Thomas Brooke
 adtunc fuit residen. & inhabitan. infra Maneria præd. & infra juris-
 diction. Cur. vis. franc. pleg. præd. & debuit sectam facere ad Cur.
 vis. franc. pleg. ill. & quod prædictus Thomas Brooke licet adtunc
 solempniter exact. fuit non comperuit sed default. fecit ratione cu-
 jus idem Thomas Brooke adtunc & ibidem per eandem Cur. amer-
 ciat. fuit quod quidem amerciammentum per Josephum Senior &
 Timotheum Roads adtunc residen. & inhabitan. infra Maneria
 prædicta afferatores per Cur. ill. adtunc & ibidem elect. & jurat.
 adtunc in Cur. illa debito modo afferat. fuit ad triginta & novem
 solid. & undecim denar. legalis monetæ Angliæ Unde præd. Tho-
 mas Brooke postea scilicet die & anno ult. mentionat. apud Ne-
 ther Flocton præd. notitiam habuisset per quod actio accrevit eis-
 dem Willielmo Hustler Richardo & Willielmo Osbaldeston ad
 exigend. & habend de præd. Thoma Brooke præd. tringint & no-
 vem solid. & undecim denar. parcell. Cumque etiam præd. Tho-
 mas Brooke postea scilicet primo die Julii Anno Domini Millesimo
 septingentesimo tertio apud Nether Flocton præd. mutuat. fuisset de
 Willielmo Hustler Richardo & Willielmo Osbaldeston quadragint.
 solid. de præd. septuagint. & novem solid. & undecim denar. resid.
 solvend. eisdem Willielmo Hustler Richardo & Willielmo Osbal-
 deston cum inde requisit. fuisset prædictus tamen Thomas Brooke
 licet sapius requisit. præd. septuagint. & novem solid. & undecim
 denar. nec aliquem inde denar. eisdem Willielmo Hustler Richar-
 do

Plaintiff's
 seisis.

Defendant an
 Inhabitant
 within the
 Jurisdiction
 of the Court
 and owed
 Suit.

Court held
 April 24.

Whereof No-
 tice was gi-
 ven to the
 Inhabitants.
 Defendant
 made Default
 in not ap-
 pearing,
 whereby the
 Jury present-
 ed him.

And he
 was amerced
 by the Court,
 and after'd
 by two Affee-
 tors chosen
 and sworn,
 at 39 s. 11 d.
 whereof he
 had Notice.

Per quod
 actio acere-
 vit quer.

Mutatus for
 40 s.

do & Willielmo Osbaldeston seu eorum alicui nondum reddidit sed ill. eis aut eorum alicui hucusque reddere contradixit & adhuc contradic. Unde dic. quod deteriorat. sunt & dampnum habent ad valenc. centum solidorum Et inde produc. litem, &c.

Et prædictus Thomas Brooke per Henr. Wood Attorn. suum ven. & defend. vim & injur. quando, &c. Et nichil in barram five præclusion. action. præd. Willielmi Hustler Richardi & Willielmi Osbaldeston præd. dic. per quod iidem Willielmus Hustler Richardus & Willielmus Osbaldeston reman. versus præfat. Thomam Brooke inde indefens. Ideo consideratum est quod præd. Willielmus Hustler Richardus & Willielmus Osbaldeston recuperent versus præfat. Thomam Brooke debitum suum præd. & dampna sua occasione detention. debiti ill. ad octo libr. eisdem Willielmo Hustler Richardo & Willielmo Osbaldeston ex assensu suo per Cur. hic adjudicat. Et idem Thomas Brooke in Misericordia, &c.

Nil dicie.

Judgment.

Misericordia.

Postea scilicet die Martis prox. post Octab. Sancti Hillarii isto eodem termino coram Domina Regina apud Westm. ven. præd. Thomas Brooke per Thomam Harvey Attorn. suum & dicit quod in recordo & processu præd. ac etiam in redditione judicii præd. manifeste est erratum in hoc videlicet quod narr. præd. in record. præd. mentionat. & super qua judicium præd. in forma præd. reddit. exist. materiaque in eadem content. minus sufficien. in lege exist. ad judic. ill. in forma præd. superinde reddit. habend. seu manutenend. Et sic judic. præd. superinde in forma præd. reddit. erroneum & vacuum in lege exist. Ideoq; in eo manifest. est errat. Errat. est etiam in hoc quod ubi per record. præd. apparet quod judicium præd. in forma præd. reddit. reddit. fuit pro præfat. Willielmo Hustler Mil. Richardo Osbaldeston Mil. & Willielmo Osbaldeston versus ipsum Thomam Brooke ubi per legem terræ hujus Regni Angl. judicium in placito præd. reddi debuisset pro præfat. Thoma Brooke versus ipsos Willielmum Hustler Mil. Richardum Osbaldeston Mil. & Willielmum Osbaldeston. Ideoq; in eo manifeste est errat. Et pet. quod judic. ill. ob. error. ill. & al. in record. & process. præd. existen. revocetur adnulletur & penitus pro nullo habeatur quodque idem Thomas Brooke ad omnia quæ occasione judicii præd. amisit restituatur Et quod præd. Willielmus Hustler Mil. Richardus Osbaldeston Mil. & Willielmus Osbaldeston ad error. præd. rejangant, &c. Et præd. Willielmus Hustler Mil. Richardus Osbaldeston Mil. & Willielmus Osbaldeston per Adrian. Moor Attorn. suum ven. & statim dic. quod nec in record. & process. præd. nec in redditione judicii præd. in ullo est erratum Et pet. quod Cur. dictæ Domina Regina nunc hic procedat ad examination. tam record. & process. præd. quam mater. præd. per ipsum Thomam Brooke superius pro error. assign. quodque judic. præd. in omnibus affirmetur.

Errors assign'd.

Joinder in Errors.

Judicium affirmetur.

Placita

Placita coram Domino Rege & Domina Regina apud Westm. de termino Sanctæ Trinitatis Anno Regni Domini Willi. & Domine Mariæ nunc Regis & Regine Angliæ, &c. tertio. Rotulo 166.

Barker versus Winch. Vide fo. 56.

Ejection in
B. R. per Ori-
ginal upon
two several
Demises.

Declaration
upon the first.

Second De-
mise.

Simo Winch nuper de Bray in Com. præd. Gen. at-
tach fuit ad respondendum Thomæ Barker Gen. de
placito quare vi & armis sex Mesuag. sex Cottag.
sexagint. acr. terræ sexagint. acr. prati trescent.
acr. pastur. & quadragint. acr. bosci cum pertin. in Paroch. de
Bray quæ Willielmus Yeildall & Rebecca Uxor ejus eidem Thomæ
dimiser. ad termin. qui nondum præteriit ac al. sex Mesuagia sex
al. Cottagia sexagint. al. acr. terræ sexagint. al. acr. prati trescent.
al. acr. pasturæ & quadragint. al. acr. bosci cum pertin. in Paroch.
de Bray præd. quæ Johannes Lidgold jun. eidem Thomæ Barker
etiam dimisit ad terminum qui nondum præteriit intravit & ipsum
a firmis suis prædictis ejecit & alia enormia ei intulit ad grave
dampnum ipsius Thomæ & contra pacem Domini Regis & Domine
Reginæ nunc, &c. Et unde idem Thomas Barker per Willielmum
Turbill Attorn. suum queritur quod cum præd. Willielmus Yeildall
& Rebecca Ux. ejus primo die Aprilis Anno Regni Domini Regis &
Domine Reginæ nunc Angl. &c. tertio apud Paroch. de Bray di-
miserent eidem Thomæ præd. sex Mesuagia sex Cottag. sexagint.
acr. terræ sexagint. acr. prati trescent. acr. pasturæ & quadragint.
acras bosci cum pertinentiis habendum & occupand. eadem tene-
menta cum pertin. eidem Thomæ Barker & assign. suis a vicefimo
quinto die Martii tunc ult. præterito usque plenum finem & termi-
num quinque annorum extunc prox. sequen. plenar. complend. &
finiend. Virtute cujus quidem dimission. idem Thomas Barker in
eadem tenementa cum pertin. ult. supradict. intravit & fuit inde
possessionat. Ac etiam quod cum præd. Johannes Lidgold eodem
primo die Aprilis Anno tertio supradict. apud Paroch. de Bray
præd. dimisisset eidem Thomæ Barker præd. sex al. Mesuagia sex al.
Cottag. sexaginta al. acr. terræ sexagint. al. acr. prati trescent. al.
acr. pastur. & quadragint. al. acr. bosci cum pertin. habend & oc-
cupand. tenementa ill. cum pertin. eidem Thomæ & assign. suis a
præd.

præd. vicesimo quinto die Martii tunc ult. præterit. usque plen. finem & terminum quinque annorum extunc prox. sequen. & plenar. complend. & finiend. virtute cujus dimission. idem Thomas in eadem tenementa cum pertin. ult. supradict. intravit & fuit inde possessionat. Et sic inde possessionat. existen. & de præd. separat. tenementis cum pertin. ut præfertur etiam possessionat. existen. præd. Simo Winch postea scilicet præd. primo die Aprilis Anno tertio supradicto vi & armis, &c. in præd. tenementa cum pertin. quæ præd. Willielmus & Rebecca Uxor ejus eidem Thomæ Barker in forma præd. dimississent ad terminum præd. superius primo specificat. qui nondum præterit ac in præd. tenementa cum pertin. quæ præd. Johannes Lidgold eidem Thomæ Barker in forma prædicta dimississet ad terminum præd. superius ult. specificat. qui nondum præterit intravit Et ipsum Thomam Barker in forma prædicta ejecit & al. enormia, &c. ad grave dampnum, &c. Et contra pacem, &c. Unde dicit quod deteriorat. est & dampnum habet ad valenciam Centum libr. Et inde producit sextam, &c.

Et præd. Simo Winch per Johannem Sandwell Attorn. suum veti. & dicit quod tenementa in narration. præd. superius specificat. sunt & a tempore cujus contrar. memoria hominum non existit fuer. parcell. Manerii de Bray in Com. præd. de quo quidem Manerio Dominus Rex & Domina Regina seifit. sunt in jure coron. Quodque Manerium præd. est de antiquo Dominico Coron. Domini Regis & Domina Regina Quodque præd. tenementa sunt placitabil. & placitat. fuer. in Cur. Manerii præd. per parvum breve Domini Regis & Domina Regina de recto clauso a tempore cujus contrar. memoria homin. non existit Et hoc parat. est verificare prout Cur. consideraverit, &c. Unde pet. judic. si Cur. Domini Regis & Domina Regina hic placitum inde cogn. velit, &c.

Pleads in Abatement, that the Lands are parcel of a Manor in ancient Demesne.

And only impleadable in the Court of the Manor by Writ of Right close.

Et præd. Thomas Barker dicit quod per aliqua per præd. Simonem Winch superius placitando allegat. Cur. Domini Regis & Domina Regina hic a cognitione placiti præd. habend. præcludi non debet quia dicit quod placitum præd. per ipsum Simonem modo & forma præd. superius placitat. materiaque in eodem content. minus sufficient. in lege existunt ad prædictam Curiam Domini Regis & Domina Regina nunc hic a cognition. placiti prædicti habend. præcludend. ad quod quidem placitum materiamque in eodem content. idem Thomas Barker necesse non habet nec per legem terræ tenetur aliquo modo respondere Et hoc parat. est verificare Unde pro defectu sufficien. respons. in hac parte idem Thomas pet. judic. & terminum suum præd. adhuc ventur. de & in tenementis præd. cum pertin. unacum dampnis suis occasione transgression. & ejection. firmæ præd. sibi adjudicari, &c. Et pro causis moration. in lege super placito ill. idem Thomas juxta formam statuti in hujusmodi casu inde nuper edit. & provis. ostend. & Cur. hic demonstrat has causas subsequen. videlicet eo quod præd. Simo in placito suo præd. non ostend. Cur. hic nec allegavit quod tenementa præd.

Demurrer.

cum pertin. in narr. præd. mentionat. nec aliqua eorum parcell. tenentur de præd. Domino Rege & Domina Regina nunc de Manerio suo de Bray præd. Et quia placitum præd. est insensibil. incert. & caret forma.

Joinder.

Et præd. Simo dicit quod placitum præd. per ipsum Simonem modo & forma præd. superius placitat. materiaque in eodem content. bon. & sufficien. in lege existunt ad prædictam Cur. dicti Domini Regis & Domina Regina nunc hic a cognitione placiti præd. habend. præcludend. quod quidem placitum materiamque in eodem content. ipse idem Simo parat est. verificare & probare prout Cur. &c. Et quia præd. Thomas ad placitum ill. non respondit nec ill. hucusque aliqualit. dedit. ipse idem Simo ut prius per. judic. si Cur. dicti Domini Regis & Domina Regina nunc hic placitum præd. cogn. velit. aut debeat. Sed quia Cur. dicti Domini Regis & Domina Regina nunc hic de judicio suo de & super præmissis reddend. nondum advisatur dies inde dat. est partibus prædictis coram Domino Rege & Domina Regina usque a die Sanctæ Trinitatis in tres septimanas ubicunque, &c. de judicio suo inde audiend. eo quod Cur. dicti Domini Regis & Domina Regina nunc hic inde nondum, &c. Ad quem diem coram Domino Rege & Domina Regina apud Westm. ven. partes præd. per Attorn. suos præd. Sed quia Cur. dicti Domini Regis & Domina Regina nunc hic de judicio suo de & super præmissis reddend. nondum advisatur dies inde dat. est partibus præd. coram Domino Rege & Domina Regina in crastinum animarum ubicunque, &c. de judicio suo inde audiend. eo quod Cur. dicti Domini Regis & Domina Regina nunc hic inde nondum, &c. Ad quem diem coram Domino Rege & Domina Regina apud Westm. ven. partes præd. per Attorn. suos præd. Super quo vis. & per Cur. dictorum Domini Regis & Domina Regina nunc hic plenius intellectis omnibus & singulis præmissis maturaque deliberatione inde habita pro eo quod videtur Cur. dicti Domini Regis & Domina Regina nunc hic quod præd. placitum per præd. Simonem modo & forma præd. superius placitat. materiaque in eodem content. minus sufficien. in lege existunt ad præd. Cur. dicti Domini Regis & Domina Regina nunc hic a cognitione placiti præd. habend. præcludend. dictum est per Cur. præfat. Simoni quod ulterius respondeat ad nar. præd. Et super hoc præd. Simo solennit. exact. per præd. Johannem Sandwell Attorn. suum ven. & defend. vim & injur. quando, &c. Et dicit quod ipse idem Simo in nullo est culpabil. de transgr. & ejection. præd. prout præd. Thomas superius versus eum queritur. Et de hoc pon. se super patriam Et præd. Thomas similiter, &c. Ideo præcept. est vic. quod venire fac. coram Domino Rege & Domina Regina in Octab. Purification. beatæ Mariæ ubicunque, &c. duodecim, &c. per quos, &c. Et qui nec, &c. ad recogn. &c. quia tam, &c. Idem dies dat. est partibus præd., &c. De quo die jurat. præd. inter partes præd. de placito præd. posit. fuit inde inter eos

Continuances.

Judgment
quod respon-
deat Ouster.

Non cul.
pleaded.

Awarding
Venire upon
a Trial at bar,
and continu-
ance over pro
defectu Jur.

in respectum coram Domino Rege & Domina Regina usque a die
 Pasche in unum mensem extunc prox. sequen. ubicunque, &c. pro
 defectu jur. &c. Ad quem diem coram Domino Rege & Domina
 Regina apud Westm. ven. partes præd. per Attorn. suos præd. Et
 jur. jurata ill. exact. similiter vener. qui ad veritat. de præmissis di-
 cend. electi triat. & jurat. fuer. Et quoad transgression. & ejection
 præd. de & in præd. sex Mesuag. sex Cottag. sexagint. acr. terræ
 sexagint. acr. prati trescent. acr. pastur. & quadragint. acr. bosci.
 cum pertin. in narration. præd. per præd. Willielmum Yeildhall &
 Rebecca uxorem ejus præfat. Thomæ Barker ut præfertur dimiss.
 dicunt super sacramentum suum quoad unam quartam partem de
 trigint. & duabus acr. terræ inde cum pertin. tent. de Manerio de
 Lords Lands & existen. in tenur. cujusdam Willielmi Whitehand
 quod præd. Simo Winch est culpabil. de transgression. & ejectione
 præd. prout præd. Thomas superius versus eum queritur Et quoad
 resid. præd. sex Mesuag. sex cottag. sexagint. acr. terræ sexagint.
 acr. prati trescent. acr. pasturæ & quadragint. acr. bosci cum per-
 tin. per præd. Willielmum Yeildall & Rebecca præfat. Thomæ ut
 præfertur dimiss. iidem juratores super sacramentum suum præd.
 dicunt quod præd. Simo non est culpabil. de transgr. & ejectione
 præd. prout præd. Simo superius placitando allegavit Et quoad
 transgr. & ejection. præd. de & in præd. sex al. Mesuag. sex al.
 Cottag. sexagint. al. acr. terræ sexagint. al. acr. prati trescent. al.
 acr. pasturæ quadragint. al. acr. bosci cum pertin. in narratione
 prædict. per prædict. Johannem Lidgold jun. præfat. Thomæ
 Barker ut præfertur dimiss. iidem jurat. dicunt super sacramentum
 suum præd. quoad unam quartam partem de trigint. & duabus
 acr. terræ tent. de Manerio de Lords Lands & existen. in tenur.
 præd. Willielmi Whitehand quod præd. Simo Winch est culpabil.
 de transgression. & ejection. præd. prout præd. Thomas superius
 versus eum queritur Et assidunt dampna ipsius Thomæ occasione
 præmiss. præd. ultra mis. & custag. sua per ipsum circa sextam suam
 in hac parte apposit. ad vigint. solid. & pro misis & custagiis ill.
 ad trigint. sold. Et quoad resid. præd. sex al. Mesuag. sex al. Cot-
 tag. sexagint. al. acr. terræ sexagint. al. acr. prati trescent. al. acr.
 pastur. & quadragint. al. acr. bosci cum pertin. in narratione præd.
 per prædictum Johannem Lidgold ut præfertur dimiss. iidem jura-
 tores super sacramentum suum prædictum ulterius dicunt quod
 præd. Simo Winch non est culpabil. de transgr. & ejection. præd.
 prout præd. Simo superius placitando allegavit Ideo consideratum
 est quod præd. Thomas Barker recuperet versus præd. Simonem
 Winch terminum suum prædictum adhuc ventur. de & in præ-
 dicta quarta parte præd. trigint. duarum acrarum terræ cum pertin.
 tent. de Manerio de Lords Lands & existen. in tenur. præd. Wil-
 lielmi Whitehand parcell. præd. sex Mesuag. sex Cottag. sexagint.
 acr. terræ sexagint. acr. prati trescent. acr. pasturæ & quadragint.
 acr. bosci cum pertin. per prædictum Willielmum Yeildall & Re-
 beccam

Verdict as to
the first De-
mise.

As to part for
the Plaintiff,
and not guil-
ty as to other
Part.

And as to the
second De-
mise, find as
to part for the
Plaintiff and
part for the
Defendant.

Judgment
quoad what
Defendant is
found guilty.

beccam Ux. ejus præfat. Thomæ Barker ut præfertur dimitt. unde per jur. præd. superius compert. exist. prædictum Simonem fore culpabil. de transgr. & ejection. præd. & præd. al. terminum suum adhuc ventur. de & in præd. al. quarta parte præd. trigint. & duarum acrarum terræ cum pertin. tent. de Manerio de Lords Lands præd. in tenura præd. Willielmi Whitehand parcell. præd. sex al. Mesuag. sex al. Cottag. sexaginta al. acr. terræ sexaginta al. acr. prati trescent. al. scr. pastur. & quadragint. al. scr. bosci cum pertin. per prædictum Johannem Lidgold jun. præfat. Thomæ Barker ut præfertur dimitt. unde per jur. præd. superius similiter compert. exist. prædictum Simonem fore culpabil. de transgr. & ejection. præd. & dampna sua præd. per jur. præd. in forma præd. assess. necnon novagint. & novem libr. pro misis & custag. suis præd. eidem Thomæ Barker per Cur. dicti Domini Regis & Dominæ Reginae nunc hic ex assensu suo de incremento adjudicat. quæ quidem dampna in toto se attingunt ad centum & un. libr. Et præd. Simo Winch capiatur, &c. Et similiter prædict. Thomas Barker in misericordia pro falso clamore suo versus prædictum Simonem Winch pro resid. transgr. & ejection. præd. Unde præd. Simo per jur. præd. in forma præd. acquietat. exist. & præd. Simo eat inde sine die, &c.

Quiet. & eat
sine die quoad
resid.

*Placita coram Domino Rege apud Westm.
de termino Sanctæ Trinitatis Anno Reg-
ni Domini Jacobi secundi nunc Regis
Angliæ, &c. tertio. Rotulo 1019.*

*Countess of Plymouth versus Throgmorton & Ux.
Vide fo. 65.*

Writ of Er-
ror.

DOMINUS REX mandavit dilecto & fideli suo Ed-
vardo Herbert Militi Capital. Justic. suo de Banco
breve suum clausum in hæc verba ff. Jacobus secundus
Dei Gratia Angliæ Scotiæ Franciæ & Hiberniæ Rex. Fi-
dei Defensor, &c. Dilecto & fidel. suo Edvardo Herbert Mil. Ca-
pital. Justic. suo de Banco salutem Quia in recordo & processu
acetiani

acetiā in redditione iudicii loquelæ quæ fuit in Cur. nostra coram vobis & sociis vestris Justic. nostris de Banco per breve nostrum inter Thomam Throckmorton Ar. & Dorotheam Ux. ejus Executricem testamenti Edvardi Pick Mil. & Brigittam Comitissam Dotissam Plymouth Executricem Testamenti Caroli Comitis Plymouth de eo quod eadem Brigetta Comitissa Dotissa Plymouth redderet præfat. Thomæ & Dorotheæ septuaginta quinque libras ut dicitur Error intervenit manifestus ad grave dampnum ipsius Brigittæ Comitissæ Dotissæ Plymouth sicut ex querela sua accepimus Nos Error. si quis fuerit modo debito corrigi & partibus præd. plenam & celerem justitiam fieri volentes in hac parte vobis mandamus quod si iudicium inde reddit sit tunc record. & process. præd. cum omnibus ea tangen. nobis sub sigillo vestro distincte & aperte mittatis & hoc breve ita quod ea habeamus a die Sanctæ Trinitatis in tres septimanas ubicunque tunc fuerimus in Anglia ut inspect. record. & process. præd. ulterius inde pro error. illo corrigend. fieri faciamus quod de jure & secundum legem & consuetud. Regni nostri Angl. fuerit faciend. Teste me ipso apud Westm. octavo die Junii Anno Regni nostri tertio.

Santhey.

Respons. Edvardi Herbert Mil. Capital. Justic. infranominat. Record. & process. loquelæ unde infra fit mentio cum omnibus ea tangen. coram Domino Rege ubicunque, &c. Ad diem infra content. mitto in quodam recordo huic brevi annex. prout interiori mihi præcipitur

Edw. Herbert.

Placita apud Westm. coram Edvardo Herbert Mil. & sociis suis Justic. Domini Regis de banco de termino Paschæ Anno Regni Domini Jacobi secundi Dei Gratia Angliæ Scotiæ Franciæ & Hiberniæ Regis Fidei Defensoris, &c. tertio. Rotulo 616.

Middlesex ff. Brigitta Comitissa Dotissa Plymouth Executrix testamenti & ult. voluntat. Caroli Comitis Plymouth sum. fuit ad respondend. Thomæ Throckmorton Ar. & Dorotheæ Uxori ejus Executrici testamenti & ult. voluntat. Edvardi Picke Mil. de placito quod reddat eis septuagint & quinque libras quas eis injuste detinet, &c. Et unde iidem Thomas & Dorothea per Carolum Draper Attorn. suum dicunt quod cum prædictus Comes in vita sua scilicet tertio die Maii Anno Regni Domini Caroli secundi nuper Regis Angliæ, &c. tricesimo secundo apud Islington per quoddam factum suum quod iidem Thomas & Dorothea hic in Cur. proferunt cujus dat. est eisdem die & anno dedit authoritatem eidem Edvardo requirere & recipere omnes & omnimod. denar. summam & summas quæ tunc fuer. vel in futuro ad aliquod tempus vel tempora infra tres annos tunc prox. sequen. deven. debet.

Declaration upon a Warrant of Attorney to the Testator, by an Executrix and her Husband.

Salary of
100l. per An-
num allow'd
to the Attor-
ney, to be
deducted out
of what he
receives.

The Attor-
ney demands
several Sums
of Money,
but none
paid.

Whereby the
Action ac-
crewed.

Breach.

Profert of the
Letters testa-
mentary.

Judgment per
Nil dicit.

& solubil. eidem Comit. super aliqua computa quatenusque & sol-
vere & disponere easdem ut ipse prædictus Comes de tempore in
tempus ordinaret vel appancuaret eidem Edvardo per aliquod
scriptum vel scripta sub manu sua duran. prædictis tribus annis Et
pro cura & labore prædicti Edvardi in præmissis præd. Comes
obligavit se per idem scriptum solvere præfat. Edvardo centum li-
bras per annum legalis moneta Angliæ duran. præd. tribus annis
aut aliter quod licit. foret præd. Edvardo Picke retinere & solvere
sibi ipsi præd. centum libras per ann. duran. præd. tribus annis ex
talibus pecuniis qual. ipse reciperet virtute ejusdem facti prout
per idem factum plenius apparet Et præd. Thomas & Dorothea
in facto dicunt quod prædictus Edvardus postea & per spacium
trium quateriorum anni extunc prox. sequen. apud Iffington
præd. de tempore in tempus sollicitavit & requisivit diversas per-
sonas ad tunc debitores præfat. Comit. ad solvend. multas denario-
rum summas ad tunc ab eisdem debit. & solubil. eidem Comit. Sed
duran. præd. tribus quater. anni vel ad aliquod tempus postea
præd. Edvardus non recepit aliquas denariorum summas virtut.
ejusdem facti unde se solvisse potuit præd. centum libras aut ali-
quam partem inde per quod actio accrevit eidem Edvardo in vita
sua ad exigend. & habend. de præfat. Comit. præd. septuaginta &
quinque libras præd. tamen Comes in vita sua & præd. Comitissa
post ipsius Comit. mortem licet sæpius requisit. præd. septuagint.
& quinque libras eidem Edvardo in vita sua seu præfat. Dorotheæ
post ipsius Edvardi mortem dum ipsa sola fuit seu præfat. Thomæ
& Dorotheæ post sponsalia inter eos celebrat. seu eorum alicui
nondum solver. nec eorum alter solvit Sed ill. eidem Edvardo in
vita sua & præfat. Dorotheæ post ipsius Edvardi mortem & eisdem
Thomæ & Dorotheæ post sponsalia inter eos celebrata reddere
omnino contradixit. eademque Comitissa ill. eisdem Thomæ &
Dorotheæ adhuc reddere contradic. & injuste detinet in retarda-
tion. fidel. execution. testamenti prædict. Edvardi præd. & ad
dampnum ipsorum Thomæ & Dorotheæ decem librarum Et inde
producunt sectam, &c. Et proferunt hic in Cur. iidem Thomas &
Dorothea literas testamentar. præd. Edvardi per quas satis liquet
Cur. hic ipsam Dorotheam fore Executricem testamenti præfat. Ed-
vardi & inde habere administrationem, &c.

Et prædicta Brigetta per Willielmum Rymer Attorn. suum ven.
& defend. vim & injur. quando, &c. Et nichil in baram sive
præclusionem actionis prædictorum Thomæ & Dorotheæ præd. di-
cit per quod lidem Thomas & Dorothea reman. versus præfat. Brigit-
tam inde indefens. Ideo conf. est quod præd. Thomas & Dorothea
recuperent versus præfat. Brigettam debitum suum præd. & damp-
na sua occasione detentionis debiti illius ad quinquaginta solid.
eisdem Thomæ & Dorotheæ ex assensu suo per Cur. hic adjudicat.
de bonis & catallis que fuer. præd. Comit. tempore mortis suæ in
manibus ipsius Brigittæ administrand. existen' levand. si tantum in

manibus suis administrand. habeat & si non habeat tunc dampna prædicta de bonis & catallis præd. Brigittæ propr. levand. Et prædicta Brigetta Comitissa dotissa Plymouth in Misericordia, &c.

Misericordia.

Et prædicta Brigetta Comitissa Dotissa Plymouth per Henricum Doughty Attorn. suum ven. & dic. quod in record. & processu præd. necnon in redditione judicii præd. manifest. est errat. in hoc videlicet quod narratio præd. materiaque in eadem content. minus sufficiens. in lege exist. ad actionem præfat. Thomæ & Dorotheæ inde versus ipsam Comitissam habend. manutenend. Ideo in eo errat. est manifest. Errat. est etiam in hoc quod per record. præd. apparet quod judicium præd. modo & forma præd. reddit. reddit. fuit pro præd. Thoma & Dorothea versus ipsam Comitissam in placito præd. ubi per legem terræ hujus Regni Angl. judic. illud reddi debuisset pro eadem Comitissa versus præfat. Thomam & Dorotheam ideoque in eo similiter errat. est manifest. Et præd. Comitissa ulterius dicit quod errat. est etiam in hoc videlicet quod non habetur aliquod Warrant. de Attorn. affilat. de record. in præd. Cor. de Comuni Banco inter partes præd. de placito præd. ad Warrantizand. Carolum Draper fore Attorn. pro præd. Thoma & Dorothea versus præd. Comitissam in placito præd. Ideo in eo similiter errat. est manifeste Unde eadem Comitissa pet. breve Domini Regis de Certiorari Capitali Justic. dicti Domini Regis de Banco dirigend. &c. Et ei conceditur, &c. per quod præcept. est Edvardo Herbert Mil. Capital. Justic. de Banco præd. quod scrutat. rotulis & al. memorand. de Warr. Attorn. Com. Middlesex de termino Paschæ Anno Regni dicti Domini Regis tertio in custodi. sua de record. existen. & quid inde in eisdem invenerit dicto Domino Regi ubicunque, &c. sine dilatione certificet una cum brevi dicti Domini Regis sibi inde direct. &c. Qui quidem Capital Justic. de Banco præd. dicti Dom. Reg. respondit quod executio brevis præd. patebat in quadam Scheda eidem brevi annex. in qua quidem Scheda continentur titulus Rotulorum de Warrant Attorn. affilat. de præd. termino Paschæ in brevi præd. specificat. in custodi. ipsius Capital. Justic. de record. existen. & recordum cujusdam Warrant. Attorn. inter partes præd. de præd. placito in eadem forma qua idem Warrant. Attorn. in eisdem Rotul. de recordo intrat. existit quæ quidem titulus & Warrant. Attorn. sequuntur in hæc verba Rotula de Attorn. recept. coram Edvardo Herbert Mil. Capital Justic. Domini Regis de Banco & sociis suis de termino Paschæ Anno Regni Domini Jacobi secundi Dei Gratia Angliæ Scotiæ Francæ & Hiberniæ Regis Fidei Defensoris, &c. tertio.

Errors assign'd.

No Warrant of Attorney, and Certiorari pray'd.

Entry of the Certiorari.

Return of the Chief Justice.

Middlesex ff. Thomas Throckmorton Ar. & Dorothea Ux. ejus Executrix testamenti & ult. voluntat. Edvardi Picke Mil. pon. loco suo Carolum Draper Attorn. suum versus Brigittam Comitissam Dotissam Plymouth Executricem testamenti & ult. voluntat. Caroli Comitissæ Plymouth de placito debiti Quod quidem breve inter

Warrant of Attorney.

Defendants
rejoin in Er-
ror.

Continuance.

Judgment re-
versed.

inter record. sine die affilatur, &c. Et super hoc prædict. Thomas & Dorothea per Michaellem Johnson Attorn. suum gratis hic in Cur. ven. & prædict. Brigitta Comitissa Dotissa Plymouth ut prius dicit quod in record. & process. præd. necnon in redditione judicii præd. manifeste est errat. allegando errores prædict. per ipsam in forma præd. allegat. & pet. quod judicium prædict. ob errores ill. & al. in record. & process. prædict. existen. revocetur annulletur & penitus pro nullo habeatur Et quod ipsa ad omnia quæ occasione judicii præd. amisit restituatur, &c. Et quod præd. Thomas & Dorothea ad error. prædict. rejangant, &c. Et quod Cur. dicti Domini Regis hic procedat ad examination. tam record. & process. præd. quam materiar. præd. superius pro error. assign., &c. Et præd. Thomas & Dorothea dicunt quod nec in record. & process. præd. nec in redditione judicii præd. in ullo est errat. Et per. similiter quod Cur. dicti Domini Regis procedat ad examination. tam record. & process. præd. quam materiar. præd. superius pro error. assign. & quod judicium præd. in omnibus affirmetur, &c. Et quia Cur. dicti Dom. Regis nunc hic de judic. suo inde reddend. nondum advisatur dies inde dat. est partibus præd. coram dicto Domino Rege usque a die Sancti Michaelis in tres septimanas tunc prox. sequen. ubicunque, &c. de judicio suo inde audiend. eo quod Cur. dicti Domini Regis hic inde nondum, &c. Ad quem diem coram Domino Rege apud Westm. ven. partes præd. per Attorn. suos præd. Sed quia Cur. dicti Domini Regis nunc hic de judicio suo de & super præmiss. præd. reddend. nondum advisatur dies inde dat. est partibus prædict. coram Domino Rege usque in Octab. Sancti Hillarii ubicunque, &c. de judicio suo inde audiend. eo quod Cur. dicti Domini Regis nunc hic inde nondum, &c. Ad quem diem coram Domino Rege apud Westm. ven. partes præd. per Attorn. suos præd. Sed quia Cur. dicti Domini Regis nunc hic de judicio suo de & super præmiss. reddend. nondum advisatur dies inde dat. est partibus præd. coram Domino Rege usque in quinden. Pascha ubicunque, &c. de judicio suo inde audiend. eo quod Cur. dicti Domini Regis hic inde nondum, &c. ad quem diem coram Domino Rege apud Westm. ven. partes prædict. per Attorn. suos præd. super quo vis. & per Cur. dicti Domini Regis hic plenius intellectis diligenterq; examinat. tam record. & process. præd. ac judicium super eisdem reddit. quam præd. causis & materiis superius pro error. assign. pro eo quod videtur Cur. dicti Domini Regis nunc hic quod in record. & process. necnon in redditione judicii præd. manifest. est errat. Conf. est quod judicium præd. ob error. præd. & al. in record. & process. præd. existen. revocetur annulletur & penitus pro nullo habeatur Et quod præd. Brigetta Comitissa Dotissa Plymouth ad omnia quæ occasione judicii præd. amisit restituatur, &c.

*Placita coram Domino Rege apud Westm.
de termino Paschæ Anno Regni Domini
Willielmi tertii nunc Regis Angliæ, &c.
octavo. Rotulo 291.*

Freeman & al'. *versus* Bernard & al'. Vide fo. 69.

London, ff.

Memorandum, Quod als. scilicet termino San-
cti Hillarri Anno Regni Domini Willi ter-
tii nunc Regis Angl', &c. sexto coram eo-
dem Domino Rege apud Westm. ven. Tho-
mas Freeman & Thomas Hagggar per Benjamin' Mould Attorn. suum
Et protuler. in Cur. dicti Domini Regis tunc ibidem quandam bil-
lam suam versus Samuel. Bernard & Thomam Rodbard in Custod.
Mar', &c. de placito transgr. super casum, &c. Et sunt pleg. de
prosequend. scilicet Johannes Doe & Richardus Roe Quæ quidem
billa sequitur in hæc verba ff. London ff. Thomas Freeman &
Thomas Hagggar queruntur de Samuele Bernard & Thoma Rodbard
in Custod. Mar. Marefc. Domini Regis coram ipso Rege existen.
pro eo videlicet quod cum octavo die Augusti Anno Domini Mil-
lesimo sexcentesimo nonagesimo tertio apud London præd. videli-
cet in Paroch. beatæ Mariæ de Arcubus in Warda de Cheape. agreat.
fuit inter ipsos Thomam Freeman & Thomam Hagggar & præfat. Sa-
muel. & Thomam Rodbard modo & forma sequen. videlicet quod
prædict. Samuel Bernard & Thomas Rodbard deliberarent præfat.
Thomæ Freeman & Thomæ Hagggar sexdecim baggas bon. novo-
rum lupulorum de tunc prox. provention. Anglice *next Growth*.
bon. mercimon. pandoxatorum, Anglice *Good Brewers Ware*, ad
trigint. & quatuor solid. per centum & quod deliberat. forent ad
vel ante vicesimum quintum diem Decembr. tunc prox. sequen. Ac
superinde in conf. quod præd. Thomas Freeman & Thomas Hagggar
solvissent præd. Samuel. & Thomæ Rodbard un. peciam auri cuneat.
vocat. *a Guinea*, legalis monetæ Angl. in parte solution. inde ac ad-
tunc & ibidem ad special. instanc. & requisition. ipsorum Samuel. &
Thomæ Rodbard super se assumpsissent & eisdem Samuel. & Thomæ
Rodbard fidelit. promississent ad performand. agreement. præd. in
omnibus ex parte ipsorum Thomæ Freeman & Thomæ Hagggar per-
formand. seu perimplend. secundum formam & effectum agreea-
ment. præd. ipsi iidem Samuel & Thomas Rodbard super se assum-
ser. & præfat. Thomæ Freeman & Thomæ Hagggar adtunc & ibi-

Declaration
upon an A-
greement to
deliver six-
teen Bags of
Hops before
Decemb. 25.

Mutual Pro-
mises to per-
form the A-
greement.

Vol. II.

M m m

dem

Breach in not
delivering
the Hops.

Second Count
upon another
Agreement
in Writing
set forth, to
deliver other
sixteen Bags
of Hops, and
left in the
Hands of a
third Person.

A Colloquium
touching the
Agreement.

Mutual Pro-
mises.

dem fidelit. promiser. quod ipsi iidem Samuel & Thomas Rodbard agreement. præd. in omnibus ea parte ipsorum Samuel. & Thomæ Rodbard performand. seu perimplend. bene & fidelit. performare & perimplere vellent præd. tamen Sampel & Thomas Rodbard promission. & assumption. suas prædict. minime curan. sed machinan. & fraudulent. intenden. eosdem Thomam Freeman & Thomam Haggar in hac parte callide & subdole decipere & defraudare præd. sexdecim baggas lupulorum seu aliquam inde parcell. super vel ante præd. vicessimum quintum diem Decembis prox. sequen. post cofection. agreement. præd. seu ad aliquod tempus postea hucusq; eisdem Thomæ Freeman & Thomæ Haggar seu eor. alteri non deliberaver. Sed ill. eis hucusq; deliberare omnino recusaver. & adhuc recusant Cumque etiam postea scilicet præd. octavo die Augusti Anno Domini supradict. apud London præd. in paroch. & Warda præd. quoddam al. agreement. habit. & fact. fuit in scriptis inter præd. Samuel. & Thomam Rodbard & eosdem Thomam Freeman & Thomam Haggar in forma sequen. videlicet quod præd. Samuel & Thomas Rodbard deliberarent eisdem Thomæ Freeman & Thomæ Haggar sexdecim al. baggas bon. novorum lupulorum de tunc prox. provention. Anglice *next Growth*, bon. mercimon. pandoxatorum, Anglice *good Brewers Ware*, ad ratam trigint. & quatuor. solidorum per centum, Anglice *at thirty-four Shillings per Hundred*, & quod deliberat. forent super vel ante vicessimum quintum diem Decembr. tunc prox. sequen. quod quidem script. agreement. relict. fuit in manibus cujusdam Thomæ Ruck Cumque postea scilicet eodem octavo die Augusti Anno supradicto apud London præd. in Paroch. & Warda præd. quoddam colloquium habit. & mot. fuit inter præd. Samuel. & Thomam Rodbard & eosdem Thomam Freeman & Thomam Haggar de & concernen. agreement. præd. ult. mentionat. & de & concernen. deliberation. duorum onerum lupulorum eisdem Thomæ Freeman & Thomæ Haggar per præd. Samuel. & Thomam Rodbard fiend. & super colloquium ill. inter præfat. Samuel. & Thomam Rodbard & eosdem Thomam Freeman & Thomam Haggar duo al. onera lupulorum secundum agreement. præd. ut præfertur relict. in manibus præd. Thomæ Ruck quodque ipsi iidem Thomas Freeman & Thomas Haggar acceptarent lupulos præd. ult. mentionat. secundum præd. prius agreement. ult. recitat. ac superinde in cons. quod ipsi iidem Thomas Freeman & Thomas Haggar adtunc & ibidem ad special. instanc. & requisition. præd. Samuel. & Thomæ Rodbard solvissent præd. Samuel. & Thomæ Rodbard un. al. peciam auri cuneat. vocat. *a Guinea* legalis monetæ Angl. in parte solution. pro eisdem lupulis ult. mentionat. ac super se assumpsissent & eisdem Samuel. & Thomæ Rodbard fidel. pmis. ad performand. agreement. præd. in omnibus ex parte ipsorum Thomæ Freeman & Thomæ Haggar performand. & perimplend. secundum formam & effectum agreement. præd. ult. mentionat. ipsi iidem Samuel & Thomas Rodbard super se assumpser. & eisdem

eisdem Thomæ Freeman & Thomæ Haggar ad tunc & ibidem fidelit. promiser. quod ipsi iidem Samuel & Thomas Rodbard agreement. præd. ult. mentionat. in omnibus ex parte ipsorum Samuel. & Thomæ Rodbard performand. & perimplend. bene & fidelit. performare & perimplere vellent Prædict. tamen Samuel & Thomas Rodbard promission. & assumption. suas præd. ult. mentionat. in forma præd. fact. minime curantes sed machinantes & fraudulent. intendentes eisdem Thomam Freeman & Thomam Haggar in hac parte callide & subdole decipere & defraudare præd. duo onera lupulorum ult. mentionat. seu aliquam inde parcellam eisdem Thomæ Freeman & Thomæ Haggar super vel ante præd. vicesimum quintum diem Decembris prox. sequen. post confectio. promission. & assumption. prædict. ult. mentionat. seu ad aliquod tempus postea eisdem Thomæ Freeman & Thomæ Haggar seu eorum alteri non deliberaver. seu eorum alt. deliberavit. Sed ill. eis hucusque deliberare omnino recusaver. & adhuc recusant Unde iidem Thomas Freeman & Thomas Haggar dicunt quod ipsi deteriorat. sunt & dampnum habent ad valenc. ducent. librarum Et inde producant sectam. &c.

Breach.

Et modo adhuc diem scilicet diem Mercur. prox. post Quintiden. Paschæ usque quem diem præd. Samuel. & Thomas Rodbard habuer. licenc. ad billam præd. interloquend. & tunc ad respondend. &c. coram Domino Rege apud Westm̄ veni tam præd. Thomas Freeman & Thomas Haggar per Attorn̄ suū prædict. quam præd. Samuel & Thomas Rodbard per Johannem Bernard Attorn. suum Et iidem Samuel & Thomas Rodbard defend. vim & injur. quando, &c. Et dicunt quod præd. Thomas Freeman & Thomas Haggar action. suam præd. inde versus eos habere seu manutenere non debent quia dicunt quod post confectio. separal. promission. & assumption. superius in narr. præd. specificat. scilicet secundo die Novembris Anno Domini Millesimo sexcentesimo nonagesimo quarto apud London præd. scilicet apud Paroch. beatæ Mariæ de Arcubus in Warda de Cheape præd. tam præfat. Thomas Freeman & Thomas Haggar quam præd. Samuel & Thomas Rodbard submiser. & posuer. seipfos in arbitrium ordinarion. & iudicium Johannis Parsonis Mil. & Richardi Hammond Pandoxator. Arbitratorum tam ex parte præd. Thomæ Freeman & Thomæ Haggar quam ex parte eorum Samuel. & Thomæ Rodbard indifferent. nominat. & elect. ad arbitrand. ordinand. adjudicand. & determinand. de & super & concernen. omnes & omnimodas action. & actiones causam & causas actionis sectas debita obligationes billas specialitat. executiones computa summam & summas monetæ differentias controversias transgr. dampna clamea & demand. quæcunq; ad aliquod tempus ante tunc habit. mot. commensat. prosecut. fact. promiss. commiss. vel dependen. in secta controversia questione five demand' per vel inter præfat. Thomam Freeman & Thomam Haggar & præd. Samuel. & Thomam Rodbard pro vel ratione aliqujus

Plead a Submission to Arbitration.

To be made
in writing
before the 1st
of December.

Arbitrators
make Award.

cujus materiae causae five rei cujuscunque ita quod p̄d. arbitratores facerent & darent arbitrium & determination. suam de & concernen. p̄miss. in scripto indentat. sub manibus & sigillis suis parat. deliberari p̄d. Thomae Freeman & Thomae Haggar Samueli & Thomae Rodbard five alteri vel eorum aliquibus apud vel in domum mansionalem Tobiae Winne Scriptor. in platea vocat. *Bartholomew-Lane*, prope Regale Excambium Lond. ante primum diem Decembris tunc prox. sequen. Quodque postea scilicet vicesimo nono die Novembris Anno Domini Millesimo sexcentesimo nonagesimo quarto supradicto apud domum mansional. p̄fat. Tobiae Winne in platea vocat. *Bartholomew-Lane*, p̄d. prope Regale Excambium in London scilicet in Paroch. Sancti Bartholomei Exchange in Warda de Broad-street London p̄fat. Johannes Parsons & Richardus Hammond arbitrator. p̄d. accept. super se onere arbitrii p̄d. per quoddam script. indentat. sub manibus & sigillis arbitratorum illorum ac parat. ad deliberand. p̄d. Thomae Freeman & Thomae Haggar Samuel. & Thomae Rodbard five alteri vel aliquibus eorum arbitraver. fecer. & deder. arbitrium & determination. suam de & concernen. p̄miss. quod p̄d. Samuel & Thomas Rodbard acetiam p̄dict. Thomas Freeman & Thomas Haggar five separal. respectivi Executor. & Administrator. p̄d. Samuel. & Thomae Rodbard Thomae Freeman & Thomae Haggar vicissim signarent ac sigillarent ac ut actum & factum sua deliberarent ad & pro usu alterius & alterorum Executor. five Administrator. suorum respective plenas & sufficientes general. relaxation. & exoneration. de omnibus actionibus sectis comput. debitis & demand. quibuscunque in Lege five Equitate de & five concernen. p̄miss. dictis arbitrator. ut p̄fertur submiss. in aliquo modo Ac p̄d. Samuel & Thomas Rodbard dicunt quod ipsi a tempore confectio. arbitrii illius hucusque semper parat. fuer & existunt signare sigillare ac ut acta & facta sua eisdem Thomae Freeman & Thomae Haggar deliberare tal. relaxationes & exonerationes qual. per arbitratores p̄d. superius arbitrantur si p̄d. Thomas Freeman & Thomas Haggar relaxation. & exoneration. ill. de p̄fat. Samuel. & Thoma Rodbard accipere vellent five voluerint Et hoc parat. sunt verificare Unde iidem Samuel & Thomas Rodbard petunt judicium si p̄d. Thomas Freeman & Thomas Haggar action. suam p̄d. inde versus eos habere seu manurenere debeant, &c.

To this the Plaintiffs demurr'd, and the Defendants join'd in Demurrer.

Placita coram Domino Rege & Domina Regina apud Westm. de termino Sanctæ Trinitatis Anno Regni Domini Willielmi tertii nunc Regis Angl', &c. Septimo. Rotulo 176.

Bacon *versus* Debary, Vide fo. 70.

London, ff.

Memorandum, Quod als. scilicet termino Paschæ ult. præterit. coram Domino Rege apud Westm. ven. Josiah Bacon per Willielmum Baker Attorn. suum Et protulit in Curia dicti Domini Regis tunc ibidem quandam billam suam versus David Debary als. dict. David Debary de Lond. Mercator. in Custod. Mar', &c. de placito debiti Et sunt pleg. de prosequend. scilicet Johannes Doe & Richardus Roe que quidem billa sequitur in hæc verba ff. London ff. Josiah Bacon queritur de David Debary als. dict. David Debary de Lond. Mercator. in Custod. Mar. Marese. Domini Regis coram ipso Rege existen. de placito quod reddat ei sexcent. libr. legalis Monet. Angl. quas ei debet & injuste detinet pro eo videlicet quod cum prædict. David octavo die Novembr. Anno Domini Millesimo sexcentesimo nonagesimo quarto apud London videlicet in Paroch. beatæ Mariæ de Arcubus in Warda de Cheape per quoddam scriptum suum obligator. figillo ipsius David. figillat. Curque dict. Domini Regis nunc hic ostens. cujus dat. est eisdem die & anno cogn. se teneri & firmiter obligari præfat. Josiah in præd. sexcent. libr. solvend. eidem Josiah cum inde requisit. esset præd. tamen David licet sæpius requisit'. &c. præd. sexcent. libr. præfat. Josiah nondum solvit sed ill ei hucusque solvere omnino contradixit & adhuc contradic. Ad dampnum ipsius Josiah Centum librar. Et inde producit sectam, &c.

Et modo ad hunc diem scilicet diem Veneris prox. post Crastinum Sanctæ Trinitatis isto eodem termino usque quem diem præd. David habuit licent. ad billam præd. interloquend. & tunc ad respondend', &c. coram Domino Rege apud Westm. ven. tam præd. Josiah per Attorn. suum præd. quam præd. David per Johannem Green Attorn. suum. Et idem David defend. vim & injur. quando, &c. Et pet. audit. script. Obligator. præd. & ei legitur, &c. pet. etiam audit Condition ejusdem script. obligator. prædict. Et ei legitur in hæc Verba ff. *The Condition of this Obligation is such, That if the above-bownden David Debary for and on the Behalf of Jacob*

Declaration upon a Bond of Arbitration.

Vol. II.

N n n

Dernyter

Dernyter of Hamborough, Merchant, his Executors and Administrators, do and shall well and truly stand to, obey, abide, observe, perform, fulfil and keep the Award, Arbitrament, Order, final End, Determination and Judgment of Maurice Williams, Nicholas Cutler, and Michael Milford of London, Merchants, or any two of them, Arbitrators, as well on the Part and Behalf of the abovenamed Josiah Bacon as of the said David Debary; and by their mutual Assents and Consents indifferently elected, named, and chosen to arbitrate, award, order, judge, determine, and a final End to make, of, for, upon and concerning all, and all Manner of Action and Actions, Cause and Causes of Action, Suits, Debts, Accompts, Reckonings, Sum and Sums of Money, Covenants, Contracts, Promises, Trespasses, Damages, Bonds, Bills, Specialties, Judgments, Extents, Executions, Trespasses, Strifes, Differences, Controversies, Matters, Claims and Demands whatsoever, as now are, or at any Time before the Date abovementioned, have been moved, stirred up, or depending between the said David Debary, as Attorney to the said Jacob Dernyter of the one Part, and the said Josiah Bacon of the other Part, for, touching or concerning certain Accompts between the said Josiah Bacon and the said Jacob Dernyter, so as the said Award, Arbitrament, Order, final End, and Determination and Judgment of the said Arbitrators, or any two of them, of and upon the Premises, be made and set down in Writing indented under their Hands and Seals, and be delivered or ready to be delivered up unto the said Parties, respectively in Difference, requiring the same, at or in the now Dwelling-House of John Chambers, Scrivener, situate in Lombard-street, London, on or before the one and twentieth Day of this instant November, then this Obligation to be void, or else to stand in full Force and Vertue.

Quibus lectis & audit. idem David Debary dicit quod præd. Josiah Bacon action. suam præd. inde versus eum habere seu manutenere non debet quia dicit quod præd. Mauric. Williams, Nicholas Cutler & Michael Milford in Condition. præd. nominat' vel duo eorum non fecer. aliquod arbitrium in script. indent. sub manibus & sigillis suis de pro & concernen præmissis præd. in Condition. præd. superius specificat. super vel ante vicesimum primum diem Novembr. in Condition. præd. mentionat. secundum formam & effectum Condition. præd. Et hoc parat. est verificare Unde petit Judicium si præd. Josiah Bacon action. suam præd. inde versus eum habere seu manutenere debeat, &c.

Nul Award
pleaded.

Replies an
Award.

Et præd. Josiah Bacon dic. quod ipse per aliqua per prædict. David Debary superius placitando allegat. ab actione sua præd. inde versus ipsum David habend. præcludi non debet quia dicit quod post confection. script. obligator. prædict. scilicet super vicesimum primum diem Novembr. Anno Domini Millesimo sexcentesimo nonagesimo quarto in Condition. præd. spec. apud London. prædict. in Paroch. & Warda præd. præd. Nicholas Cutler & Michael Milford duo Arbitrator. in Condition. præd. superius spec. acceper. super se onus arbitrand' & ordinand. de & super præmissis in Condition.

Condition. præd. superius mentionat. & fecerunt Arbitrium suum in script. indentat. sub manibus & sigillis suis inter partes & de- & super præmiss. in Condition. præd. mentionat. per quod quid- dem Arbitrium hic in Cur. prolat. iisdem Arbitrator. recitand. quod cum præd. David pro & ex parte Jacob Derynter de Hamborough Mercator. & præd. Josiah per mutuas obligation. Anglice *inter- changeable Obligations*, geren. dat. octavo die tunc instant. Novem- bris Obligar. fuer. alt. alterutro in sexcent. libr. conditionat. ad per- stand. arbitrium, Anglice, *to stand to the Award*, diei Mauricii Williams Nicholai Cutler & Michaelis Milford vel duorum eorum Arbitratorum aliquorum mutualit. inter se elect. ad iudicand. deter- minand. & finalit. finiend. de & in omnia & omnimod. Action. & Actiones Causam & Causas Action. sect. debit. Comput. Computa- tion. summam & summas denar. convention. contract. promissio- nis. transgression. dampn. obligation. bill. specialit. iudic. extent. execution. litem different. controvers. mater. clam. & demand. quæ- cunque que tunc fuer. vel ad aliquod tempus ante dat. script. ob- ligatorii præd. mot. fuissent excitat. vel dependen. int. præd. Da- vid Debary (ut Attorn. dict. Jacob Derynter) & prædict. Josiam Ba- con tangen. Comput. inter prædict. Josiah Bacon & prædict. Jacob Derynter ita quod Arbitrium & determinat. dict. Arbitrator. vel aliquor. eorum duorum fact. fuit. in script. indentat. sub eorum vel aliquor. eorum duorum manibus & sigillis parat. deliberand. præd. partibus in different. idem requiren. ad vel in tunc & nunc domum Mansional. Johannis Chambers scriptor. situat. in Lombard-street, London. super vel ante dict. vicesimum primum diem Novembr. prout per dict. obligat. & Condition. eorundem plenius apparet. præd. Nicholaus Cutler & Michael arbitraver. & ordinauer. præd. David Debary Executor. Administrator. vel assign. suos ex parte præd. Jacob Derynter ad solvend. vel solvi causand. præd. Josiah Executor. Administrator. vel assign. suis summam trescent. qua- dragint. quinque libr. sex. solid. & decem denar. legalis monet. Angl. super vel ante secundum diem Januar. tunc prox. & ulterius arbitraver. & ordinauer. quod præd. Josiah Bacon & præd. David Debary ex parte prædict. Jacobi Derynter super solution. præd. denar. sum. ut præfertur signarent & sigillarent & legalit. execut. forent & deliberarent ad vel in usum eor. alterius bonam & sufficien. relaxation. omnis & omnimod. action. & actionum causæ & causarum action. sect. debitor. comput. computat. summæ & summar. denar. convention. contract. promission. transgr. dampn. obligation. bill. specialitat. iudicior. extent. execution. litium different. controvers. material. clam. & demand. quarumcunque die. Compa. tangen. prout per Arbitrium præd. apparet. Et idem Josiah in facto dict. quod arbitrium præd. in forma præd. fact. postea scilicet præd. vicesimo primo die No- vembris Anno supradict. apud London. prædict. in Paroch. & Warda præd. deliberat. fuit. tam præfat. Josiah quam præd. David

Award set forth.

Award deli- vered.

secun-

Protestando.

Breach assigned.

secundum formam & effectum Condition. script. obligator. præd. Idemque Josiah ulterius dic' quod licet ipse idem Josiah a tempore confection. Arbitrii præd. hucusque bene & vere observavit performavit & custodivit omnia & singula in arbitrio præd. content. ex parte ipsius Josiah performand. & perimplend. secundum formam & effectum Arbitrii ill. protestando etiam quod præd. David Debary a tempore confection. ejusdem Arbitrii hucusque non observavit performavit seu perimplevit Arbitrium præd. in aliquibus performand. & perimplend. secundum formam & effectum arbitrii ill. in facto idem Josiah dic. quod præd. David Debary non solvit vel solvi causavit præd. Josiah præd. summam trescent. quadragint. & quinque libr. sex solid. & decem denar. super vel ante præd. secundum diem Januar. quas ei adtunc solvisse debuit secundum formam & effectum Arbitrii præd. Et hoc parat. est verificare Unde pet. Judicium & debitum suum præd. unacum dampnis suis occasione detention. debiti ill. sibi adjudicari, &c.

Demurrer & Joinder, & Jud. pro Def.

*Placita coram Domina Regina apud Westm.
de termino Sancti Hillarii Anno Regni
Dominae Annae nunc Reginae Angliae,
&c. secundo. Rotulo 450.*

Winter *versus* Garlick. Vide fo. 75.

Civit. Bristol. ff.

Declaration
upon Arbitration-Bond.

Memorandum, Quod als. scilicet Termino Paschæ ultimo præterito coram Domina Regina apud Westm. ven. Edmundus Winter per Richardum Longford Attorn. suum Et protulit in Cur. dict. Dominae Reginae tunc ibidem quandam billam suam versus Edvardum Garlick als. dict. Edvardum Garlick de Civit. Bristol Pharmacopola. in Custod. Mar', &c. de placito debiti Et sunt plæg. de prosequend. scilicet Johannes Doe & Richardus Roe quæ quidem billa sequitur in hæc verba ff. Civit. Bristol. ff. Edmundus Winter queritur de Edvardo Garlick als. dict. Edvardum Garlick de Civit. Bristol. Pharmacopola. in Custod.

Custod. Mar. Marefc. Domina Regina coram ipsa Regina existen. de placito quod reddat ei Centum libr. legasis moneta Angliæ quas ei debet & injuste detinet pro eo videlicet quod cum prædict. Edwardus decimo nono die Augusti Anno Regni Domini Willielmi tertii nuper Regis Angl. &c. decimo tertio apud Civit. Bristol. in Com. ejusdem Civit. per quoddam script. suum Obligatorium sigillo ipsius Edwardi sigillat. Curque Domina Regina nunc hic ostens. cujus dati est eisdem die & Anno cogn. se teneri & firmit. obligari præfat. Edmundo in præd. Centum Libr. solvend. eidem Edmundo cum inde postea requisit. esset præd. tamen Edwardus licet sæpius requisit. &c. præd. Centum libr. eidem Edmundo nondum solvit. sed ill. ei hucusque solvere omnino contradixit & adhuc contradicit ad dampnum ipsius Edmundi decem Librar. Et inde producit sextam, &c.

Et modo ad hunc diem scilicet diem Lunæ prox. post Octab. Plea. Sancti Hillarii isto eodem Termino usque quem diem præd. Edwardus habuit licent. ad billam præd. inrerloquend. & tunc ad respondend. &c. coram Domina Regina apud Westm. ven. tam præd. Edmundus per Attorn. suum præd. quam præd. Edwardus per Johannem Till Adam Attorn. suum Et idem Edwardus defendit vim & injur. quando, &c. Et pet. audit. scripti obligator. præd. & ei legitur, &c. pet. etiam auditum Condition. ejusdem scripti & ei legitur in hæc verba fl. *The Condition of this Obligation is such, That if the above bounden Edward Garlick, his Heirs, Executors and Administrators, for his and their Parts and Behalfts, do and shall in all Things well and truly stand to, obey, abide, perform, fulfil and keep the Award, Order, Arbitrement, final End and Determination of John Hind of the City of Bristol, aforesaid, Gentleman, and Johd Packer of the same City, Bell-founder, Arbitrators indifferently named, elected, and chosen, as well on the Part and Behalf of the above bounden Edward Garlick, as of the abovenamed Edmund Winter, to arbitrate, award, order, judge, and determine of and concerning all and all Manner of Action and Actions, Cause and Causes of Action, Suits, Bills, Bonds, Specialties, Judgments, Executions, Extents, Quarrels, Controversies, Trespasses, Damages and Demands whatsoever, at any Time or Times heretofore had, made, moved, brought, commenced, prosecuted, done, suffered, committed or depending by and between the said Parties, or either of them, so as the said Award be made in Writing, and ready to be delivered to either of the said Parties, requiring the same on or before the eighth Hour in the Afternoon of this present Day: But if the said Arbitrators do not make such their Award of and concerning the Premises by the Time aforesaid, That then if the said Edward Garlick, his Executors and Administrators for his and their Parts and Behalfts, do in all Things well and truly stand to, obey, abide, perform, fulfil and keep the Award, Order, Arbitrement, Umpirage, final End and Determination of Robert Godfrey Gent. of and concerning the Premises, so as the said Umpire do make his*

Oyer of Condition.

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Award

Pleas no Award made by the Arbitrators, but that the Umpire did.

Umpirage set forth that the Defendant should pay Costs of a Suit.

Tender and Refusal.

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Et

Et prædictus Edmundus dicit quod ipse per aliqua per prædict. Edvardum superius placitando allegat. ab actione sua prædict. inde versus eum habend. præcludi non debet quia dicit quod prædictus Edvardus ante præd. tempus confession. scripti obligatorii præd. apud Civit. Bristol. præd. in Com. ejusdem Civit. ac infra jur. Cur. dicti nuper Domini Regis Civitat. suæ de Bristol. præd. tent. coram Majore & Alderman. ejusdem Civitat. falso & maliciose dixisset & popalasset de eodem Edmundo diversa falsa ficta scandalosa & maliciosa verba idemque Edmundus pro obtentione & recuperation. dampnor. occasione diction. & propalation. verborum illorum ante præd. tempus confession. scripti obligatorii præd. levasset in præd. Cur. dicti nuper Domini Regis Civitat. Bristol. præd. tent. coram Majore & Alderman. Civitat. præd. quandam querelam versus præd. Edvardum de placito transgress. super Casum ac superinde talit. processum fuit quod ipse idem Edmundus apud Civit. Bristol. præd. in Com. ejusdem Civit. solvit erogavit & exposuit in prosecution. quærelæ præd. versus præd. Edmundum summam quatuor libr. quinque solid. & decem denar. legalis monet. Angl. ac superinde iidem Edmundus & Edvardus pro determination. sectæ ill. & omnium al. demandorum quorumcunque postea scilicet præd. decimo nono die Augusti anno regni dicti nuper Domini Regis decimo tertio supradicto apud Civit. Bristol. in Com. ejusdem Civit. per separal. scripta obligatoria sua per alterum alteri eorum mutualit. sigillat. & deliberat. submiser. se ipsos performare & perimplere arbitrium præd. Johannis Hinde & Johannis Packer seu in defectu inde umpirag. præd. Roberti Godfrey scilicet præd. Edvardus per scriptum suum obligatorium in narratione præd. superius mentionat. Et idem Edmundus in facto dicit quod ipse idem Edmundus post confession. umpiragii præd. per præd. Robertum & ante diem exhibition. bill. ipsius Edmundi præd. scilicet præd. vicesimo primo die Augusti anno regni dicti nuper Domini Regis decimo tertio supradicto apud Civit. Bristol. præd. in Com. ejusdem Civit. notic. præd. Edvardo dedit quod ipse præd. Edmundus in prosecution. sectæ præd. solvisset & expendisset præd. summam quatuor. libr. quinque solid. & decem denar. & denar. ill. de eodem Edvardo adtunc & ibidem demandavit quodque præd. Edvardus easdem quatuor libr. quinque solid. & decem denar. eidem Edmundo ad aliquod tempus hucusque non solvit secundum formam & effectum umpiragii præd. Et hoc parat. est verificare, Unde pet. judicium & debitum suum præd. unacum dampnis suis occasione detention. debiti illius sibi adjudicari, &c.

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19. It lies for negligent keeping his Fire in a Field, whereby another's Corn is burnt, or other Damage done 13

20. But not for negligent keeping Fire, &c. against a Lessee at Will, by a Lessor seized in Fee 19

21. *Secus* if the Lessor has only a Term for Years or Life; or if a Stranger is damnified 19

22. If a Lessee assigns his whole Term, and the Assignee burns the House by Negligence, that Action lies not 13

23. *Contra* where he assigns only part thereof, and it appears he has a residuary Interest *ibid.*

24. It lies where a Person not concern'd, procures one to sue another without Cause 14, 15

25. So for maliciously causing one to be indicted, whereby he is damnified

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fied either in Person, Reputation or Property Page 14, 15

26. As for maliciously causing, &c. *per quod* he was put to great Expence, tho' the Indictment was insufficient 15

27. So for maliciously causing one to be indicted of a Riot, &c. after Acquittal by Verdict 13

28. But *Nolle prosequi* is not sufficient Evidence to maintain a Declaration, in case of such Acquittal 21

29. It lies not by an Administrator under the King's Letters Patents, for maliciously putting in Caveats, *per quod*, &c. 13

30. Nor for bringing an Action where nothing is due, without some special collateral Wrong, which must be shewn 14

31. In case for maliciously holding to special Bail, the Declaration ought to shew the Sum due, and the Process specially, and that the Action is determined 15

32. Where the Grantee of Estovers may have Case against the Grantor, and where *Trespass*; Vide 638

Action of the Case on Assumpsits.

1. *Indebitatus Assumpsit* lies in no Case but where Debt lies 23

2. But where one receives Money to another's Use, it lies against the Receiver 24, 27, 28.

3. And where one pays Money by Mistake on an Account, or by any mere Deceit, he may have this Action 22

4. But not where it is paid knowingly upon an illegal Consideration *ibid.*

5. *Ergo* not where Money is paid by an Obligor upon any usurious Bond *ibid.*

6. Nor for Money deliver'd to a Solicitor, &c. to bribe Custom-House-Officers, &c. and laid out accordingly *ibid.*

7. It lies for one that pays Money on a Policy of Insurance, believing the Ship lost when it is not Page 22.

8. It lies on a Promise to pay so much new Money in Consideration of so many Pieces receiv'd of old Money 25

9. So, on a Promise to pay 50*l.* in Consideration of a Note of 50*l.* under a third Person's Hand, deliver'd by the Plaintiff to the Defendant *ibid.*

10. For the Note being Evidence of a Debt due, the parting with it is a good Consideration *ibid.*

11. So, in Consideration that the Plaintiff would receive *A.* &c. into his House *ut Hospites*, and find 'em Meat, &c. with an Averment that he did receive, &c. tho' not said, *ut Hospites* *ibid.*

12. So in Consideration the Plaintiff would accept the Defendant to be his Debtor, instead of *A.* with Averment that he did accept, &c. And held good after Verdict tho' no express Averment that *A.* was discharged 29

13. But not against *B.* for Money lent *A.* at *B.*'s Request, because the Promise is only collateral 23

14. Yet it lies against a Stranger on his Promise to pay the Debt if the Officer would restore Goods taken on a *F. Fa'* 28

15. It lies on a conditional Promise, as, Prove it and I will pay you, if sued within six Years 29

16. It lies by an Executor against one that receives Money by Order of an Administrator, &c. after Administration repealed 27

17. So by an Executor on a Promise to himself for a Debt to the Testator, if he declares accordingly 28

18. But if he declares on a Promise to the Testator, and the Statute of Limitations is pleaded, he can't give in Evidence a Promise to himself *infra sex Annos* *ibid.*

B

19. A.

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19. A. living a former Wife, marries B. and receives her Rents, &c. B. may have *Indeb' Assumps'* against A. for so much Money receiv'd to her Use *Page 28*

20. It lies where in Consideration the Plaintiff promis'd to marry the Defendant, the promised to marry him, because mutual Promises 24

21. But if the Promise be on one Side only, or if that on either Side is not binding, the whole is *Nudum Pactum* *ibid.*

22. If one assumes, &c. as Action on the Case, Numb. 3. and see *Baron and Feme*, Numb. 8.

See also *Bills of Exchange* and *Quantum meruit*. And for Actions on the Case for Words, vide *Words*.

Actions Popular.

1. An Action *qui tam* on a Penal Statute will not lie against an Attorney of C. B. in any other Court 30

2. For an Informer cannot sue where he pleases, tho' the King himself may *ibid.*

3. And Prosecutors *qui tam* are look'd on as common Informers *ibid.*

4. Where a Statute gives a Penalty to a Stranger and he sues, he is a common Informer, and shall pay Costs on 18 *El. c.* *ibid.*

5. But where it is to the Party grieved he is not a common Informer nor liable to Costs by that Statute *ibid.*

6. All popular Actions on penal Statutes made before 21 *Jac. 1. c. 4.* must be brought and prosecuted in the proper County 373

Additions.

1. Addition of Place, &c. is not necessary in a Writ of *Homine Reple-*

giando on the Statute 1 *H. 5. c. 5.* *Page 5, 6*

2. Nor in any Case where Process of Outlawry lay not at Common Law

3. *Ergo* not in Replevin where such Process is only given by Statute 25 *E. 3. c. 17. 2.* *ibid.*

4. And the Statute 1 *H. 5.* touching Additions, is to be construed strictly *ibid.*

5. *Ergo* it extends not to a *Novel Disseisin* (or other mixt Action) tho' the King shall have a Fine, and Exigent lies *ibid.*

6. And *Original Writ* in that Statute intends such *Original* as the Court proceeds on *ibid.*

7. *Ergo* not *Vicountiels*, as Replevins, &c. where the Proceedings are only on the *Pluries* *ibid.*

8. And where the Addition is not in the first Writ, if it be in the second or the *Pluries*, it vitiates the Writ 6

9. Any Matter that distinguishes the Persons makes the Addition of *Senior* or *Junior* unnecessary 7

10. As where there are two A. Bs. and the Writ is against A. B. *in Custod' Mar'* 'tis well, except shewn that both are *in Custod' Mar'* *ibid.*

11. And where no such Addition is, the Father (or *Senior*) is *prima facie* intended *ibid.*

12. A Peer's eldest Son can't in legal Proceedings have the Addition of his Father's second Title, tho' such Addition is allow'd him in common Par- lance 451

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2. And every Peculiar is an Ordinary for this Purpose: And see the Nature and Kinds of Peculiars 41

3. Admi-

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3. Administration originally belonged to the Bishop, and *Henslo's Case* in 9 Co. deny'd. 2. Page 37.

4. It may be granted by the King, for he is Supreme Ordinary. 41

5. Where granted by the Lord of a Manor, and how to declare thereupon *ibid.*

6. Narr' upon Administration granted *per Official' peculiar' &c. debito modo commissa*, is good *sans* Averment that he had Jurisdiction of Administrations 40

7. For where one grants Administration *virtute Officii*, the Plaintiff need not aver his Authority, *aliter* if by Special Commission. 41

8. So in Narr' by an Administrator, want of alledging by whom committed is cured by pleading *Non est factum*, or any Plea in Chief. 37, 38

9. But ill on Demurrer, for it might be by a Peculiar; and then it must be averr'd, *cui Administrationis Commissio de Jure pertinuit, &c.* 38

10. To a Narr' on Administration committed *per Ep' L.* Plea that he was resident in another Diocese *tempore mortis*, is a good Bar. 37

11. Where one has two Houses in divers Dioceses, it shall be granted by the Ordinary where he died (*Q. if Bon notab'*) *ibid.*

12. Where *Bon notab'* are in several Dioceses in the same Province the Archbishop thereof must grant Administration 39

13. But where in one Diocese in one Province, and in another Diocese in another Province, each Bishop must grant it *ibid.*

14. Administration granted in *Darset* gives no Title to administer a Judgment had in any Court in *Westminster* 40

15. Administration is void if granted by a wrong Ordinary, but voidable only if granted to a wrong Person 38

16. If the Intestate dies *sans* Kindred, the Property is in the Ordinary till Administration granted Page 37

17. And in that Case the Ordinary might dispose *in pios usus*, except Letters Patents procured as usual. 37

18. Where a Person dies Intestate, the Ordinary shall commit Administration by Stat' 31 E. 3. c. 11. 41

19. Spiritual Court may grant Administration to which they will of Kindred in equal Degree. 38

20. Or part to one and part to another: But of an entire Debt it must be to one only 38

21. Administration was granted to the Grandmother and a *Mandamus* prayed to the Spiritual Court by the Aunt, but denied 38

22. Administration of the Wife's Goods must be granted to the Husband only 36

23. But of the Husband's Goods, it may be either to the Wife or next of Kin. &c. *ibid.*

24. A Man marrying a *Feme Executrix*, &c. the Administration is devolved on him; and he may bring *Assumpsit* on a Promise to himself without the Wife 17

25. Administration can't be granted where there is a Will and Executor, tho' the Will be concealed or the Executor refuse 301

26. Nor can it be granted tho' the Executor becomes Bankrupt, &c. *contra* if he becomes *Non compos* 36

27. Where it is committed to a Debtor the Action is only suspended (*Vide Executors*) 303

28. and if to an Obligor, tho' he has a Right to receive and is to pay the Money himself, 'tis no Extinguishment 306

29. Also since the Statute 22 Car. 2. an Administrator is bound to account without Citation 305

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30. And one intitled to a Distribution by that Statute may sue an Administrator to prove his Account

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31. But a Creditor can't sue the Administration Bond for Nonpayment of a Debt, for the Statute does not extend to it

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32. Administration granted *durante Minoritate* of an Administrator ceases not till 21. But of an Executor it ceases at 17.

39

33. Administration may be granted during the absence of B. but the Declaration must aver that B. is absent

42

34. The Cause of Action accrues to the Administrator from the time of Administration granted

421

35. For if A. receives the Interest Money, and afterwards Administration is granted to B. B. has six Years from the Administration granted to bring his Action (*contra* of an Executor, *Vide* 21.)

ibid.

36. Yet if he consents to the Defendant's retaining a Chattel before, he can't have Trover after Administration granted, *per contra Holt*

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37. If sued as Executor, he may plead he is Administrator, and need not traverse that he intermeddled before Administration granted, 298, 317

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38. But where sued as Administrator, if he pleads he is Executor, he must also traverse the dying Intestate

297

39. Where an Administrator is charged as Assignee, the Judgment is *De bonis propriis*

309

40. But where charged as Administrator, tho' he might have been charged as Assignee, tis only *De bonis Testatoris*

316

41. A Judgment against him as Executor may be pleaded in Bar to another Action brought against him as Administrator

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42. On a Writ of Inquiry, after an Interlocutory Judgment reviv'd by *Sci Fa* on 8, 9 *W.* 3. the final Judgment must be against the Administrator and not the Intestate

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43. Administrator under Letters Patents can't have *Caveat* for maliciously hindring him, by putting in *Caveats*, &c.

37

44. An Administrator impowers A. to receive the Intestate's Debts, but a Will appearing the Administration is repealed; the Executor may have *Assumpsit* against A. as for Money received to his Use

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Admiralty.

1. Mariners Wages due by Parol, are suable there, tho' the Contract on Land

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2. *Aliter* if due by Deed or special Agreement

ibid.

3. The Mate of a Ship may sue the Master thereof there for his Wages

33

4. But the Master can't sue there on his Contract with the Owners

ibid.

5. So where an Executor of a Master sued there for the Master's Wages, a Prohibition was granted.

ibid.

6. For tho' Suit there for Mariners Wages is allow'd by mere Indulgence, yet it never was for the Masters

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7. By their Law every Contract with the Master implies an Hypothecation of the Ship

34

8. But not so by the Common Law, without an express Agreement

ibid.

9. And the Master by their Law may Hypothecate the Goods as well as the Ship

ibid.

10. And on such Hypothecation the Master is suable there, but not the Owners.

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11. The Statute of Limitations is pleadable there to a Suit for Seamen's Wages Page 424

12. Where it has Jurisdiction their Sentences bind, and Common Law Courts must observe their Determinations 32, 33

13. Tho' the Admiralty-Court deny a Copy of the Libel, yet no Prohibition till Appearance. *Contra* of the Spiritual Court 553

14. Prohibition can't be granted to try the Validity of their Process for Appearance, before Libel or Appearance 35

15. But if their Process be in Nature of an Execution, Prohibition may be before Appearance 31, 35

16. In a Suit there the Principal died before Sentence, and they proceeded on the Stipulation against the Sureties. *Quere* if a Prohibition may be 33

17. See before, in Actions of the Case. Case lies by the Owner of a Ship for arresting her by Admiralty-Process, &c. 11

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1. The Minority of an Executor ceases at the Age of 17. But of an Administrator not till 21 39

2. The Age for making a Will to dispose of Goods, Chattels and Personal Estate, may be at 14 14

3. But Lands cannot be dispos'd of by Will till the Age of 21 44

4. Yet if one be born 1 Feb. at Eleven at Night, he may make his Will 41

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2. A Policy of Insurance altered by Agreement after it was underwritten, yet good 444

3. And in some Cases a Parol Agreement may avoid a Writing if made at the same Time 445

4. A Goldsmith's Note, or Bill of Exchange, not to be taken as Cash, except so expressly agreed by the Receiver 124, 442

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Aiders vide *Principal and Accessary*.

Alehouses.

1. To forfeit 10s. to the Poor if they permit any Inhabitant to sit Tippling above an Hour 45

2. Before 5, 6 Ed. 6. any Person might keep an Alehouse *sans* Licence, being a lawful Means of Living *ibid.*

3. But if disorderly kept it was indictable as a Nuisance, and by that Statute two Justices (*Quor' unus*) may suppress it ibid.

4. And none are now to keep Alehouses unless licensed and Recognizance given *ut ibid.* ibid.

5. And if any does, he may be committed for three Days, and bound with Sureties to appear at the Sessions *ibid.*

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6. That Statute does not extend to Inns being for entertaining Travellers, &c. unless they degenerate to Alehouses *Page 45*

7. But one that keeps an unlicensed Alehouse is not to be indicted, because punishable by the Statute otherwise *ibid.*

8. See there the Difference between suppressing a licensed and unlicensed Alehouse *45, 46*

9. The Sessions can't suppress an Alehouse licensed by two Justices *470, 471*

Aliens and Denizens.

1. *Turks and Infidels* are not perpetual enemies to us, &c. and Justice *Brook's* Opinion denied *46*

2. For tho' they differ from us in Religion, that does not oblige us to be Enemies to their Persons *ibid.*

3. They are the Creatures of God, of the same Species with us, and 'tis a Sin to hurt their Persons *ibid.*

4. If an *Alien Enemy* come hither *sub salvo Conductu*, he may maintain an Action *ibid.*

5. So may an *Alien Army* that lives here under the King's Protection, tho' a War afterwards happen between the two Nations *ibid.*

6. So an *Alien Enemy* that lives here in Peace under Protection, may sue a Bond, &c. *ibid.*

7. For suing is but a consequential Right of Protection; *aliter* of one Commorant beyond Sea *ibid.*

8. Also, the Feme Covert of an *Alien Enemy*, she living here under Protection, is chargeable as a Feme Sole *116*

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Amends vide Tender, &c.

Amendment,

1. While the Declaration, &c. is in Paper, the Court may amend at Pleasure, because not within the Statutes of Amendments *Page 47, 520*

2. But when it comes to be in Parchment, the Court can mend no further than those Statutes allow, for 'tis then a Record *ibid.*

3. Stat' 14 E. 3. c. 6. and 8 H. 6. c. 12, 13. are the only Statutes of Amendments, the others are Statutes of Jeofails *51*

4. Declaration, &c. cannot be amended on Demurrer, after Entry on the Roll *50*

5. But on a Plea to the Right, or in Abatement, it may be reasonable to amend *ibid.*

6. Yet Declaration against J. G. Knt. on Plea in Abatement that he is Knt. and Bart. denied to be amended *ibid.*

7. A Judgment enter'd on the Plea-Roll was amended by the Paper-Book signed by the Master *ibid.* and *51*

8. Variance between the Writ of Error and the Record refused Amendment, tho' the Curfitor's Note was right *49*

9. For a Writ of Error is a Commission to the Judges, and the Court can't amend their own Commission *ibid.*

10. At Common Law no Difference as to Amendments between Civil and Criminal Cases, *contra per Stat' 47, 51*

11. A Writ of Covenant for a Fine, being an Original, is not amendable by Common Law or Statute *52, 53*

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13. Variance between the Scire Fa and the Judgment not amendable, &c. *Vide bin* *52*

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15. *Venire Ret'* 23 *Octob.* *Distingas* Tested 24. a Discontinuance and not amendable 51

16. In the *Distingas* the Day of *Nisi prius* was appointed after the Day in Bank, and after Verdict held not amendable by the Plea-Roll; because the Judges Authority was confined to that Day 48, 49

17. Ejectment against seven, all joint in the Common Rule, and the Issue was right in the Plea-Roll, &c. But the *Nisi prius*-Roll was against five only, and after Verdict *pro Quer'* this amended by adding the two others 48

18. A Demise in Ejectment laid 1697 for 96, not amendable after Verdict, because it would be another Title ibid.

19. A Verdict either general or Special may be amended by the Clerk of Assizes Notes in Civil Cases, but not in Criminal 47, 53

20. A Special Verdict has been amended by the Notes of the Counsel in the Cause, and that after Error brought 47, 53

21. An Information may be amended after Plea pleaded, and *per Holt* after the Record sealed up. 47

22. A Plea to Indictment of Murder amended after Replication and before Entry on the Roll ibid.

23. An Information of Forgery amended in ten Places (not material) without Costs or Imparlance 50

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25. A *Distingas* with a Blank for *Debiti*, i. e. the Cause of Action, amended after Verdict, as no *Distin-*
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26. For Want of a *Distingas* or no *Distingas* is aided by Verdict; contra of an ill *Distingas* Page 454

27. If the Plaintiff moves to amend his Declaration the same Term the Defendant's Plea comes in, he need not give new Rules to plead 520

28. After a Plea to Issue or Demurrer joined, while in Paper only, the Party may amend his Plea, or wave his Demurrer ibid.

29. See an Appeal amended by striking out of the Court *per Attornatum suum* 64

30. After Judgment by Default, and Error brought, the Declaration was amended by the Warrant of Attorn on the Top of the same Roll 89

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2. The Privileges arise from the Constitution and Nature of the Thing, coeval with the Government it self ibid.

3. They are supposed to commence by Act of Parliament; for they can't now be created by Grant ibid.

4. When triable by the Record of *Doomsday-Book*, and when by the Country ibid.

5. Antient Demesne is Land under the Title of *Terra Regis* in that Book, and none other ibid.

6. Antient Demesne Lands held of a Manor in Antient Demesne, are only impleadable in the Lord's Court there 56

7. But where Parcel of the Manor only is antient Demesne, there the parti-

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8. By a Recovery at Common Law, Antient Demefne becomes Frank Fee, until reversed *57*

9. Deceit lies for levying a Fine of Antient Demefne Lands *210*

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1. The King can't grant an Annuity to charge his Person, for his Person is not chargeable therewith, tho' a Subject's is *58*

2. But he may grant it out of his Excise or other Branch of his Revenue, which shall be charged therewith *ibid.*

3. A Pension out of an Appropriation, tho' by Prescription, is suable in the Spiritual Court *ibid.*

4. For it could not begin but by the Grant and Institution of spiritual Persons *ibid.*

5. And whether granted by the Bishop's Ordinance, or by his Concurrence with the Patron, the Church it self is charged *ibid.*

6. Yet such Annuity, &c. can't be released to the Ordinary, because it is Temporal *ibid.*

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1. The Plaintiff in Appeal of Murder, &c. must count in Person, and cannot by Attorney *62, 64*

2. And if he be not present, he may be demanded and nonsuited *ibid.*

3. Yet such Nonsuit is not peremptory, because before Appearance *ibid.*

4. An Appeal is to be arraigned in French; but the Roll deliver'd in is to be in Latin *ibid.* and *61*

5. But tho' it must be commenced in Person it may be prosecuted by Attorney, unless where Wager of Battail lies *62*

6. And as the Plaintiff can't count, neither can the Defendant therein appear or plead by Attorney *Page 59*

7. *Nul tiel* Parish is a good Plea therein, but not pleadable by Attorney *ibid.*

8. The Parish may be named and not the Vill; for a Parish is not intended to contain more than one Vill. (2.) *ibid.*

9. Erroneous Process therein is aided by the Defendant's Appearance and Pleading to Issue *ibid.*

10. *Aliter* where he challenges the Defect by demurring in Abatement, &c. *ibid.*

11. And see *Numb. 1. ib.* That an Adjournment after a void Plea receiv'd discontinues the Appeal *ibid.*

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13. On an Appeal of Murder the Party may be bailed by B. R. tho' convicted of Manlaughter *61, 62*

14. And on such Conviction may be allowed his Clergy, but shall not be discharged thereupon *61*

15. For his Recognizance is to stand till he has discharged the Appeal by *Sci. Fa.* against the Appellant *ibid.*

16. And see there the proceeding on such *Sci. Fa.* and the arrainging of the Appeal thereon *de Novo* *ibid.*

17. Tho' the Appeal was put *sine die*, yet no Discontinuance, for the *Certiorari* continues it *62*

18. Said, An Appeal either by Writ or Bill, is always arraigned on the Plea-Side, unless it come in by *Certiorari*, and then on the Crown-Side *ibid.*

19. The Recognizance for Bail in Appeal may be either to the King, or Appellant, but best to the King *ibid.*

20. See the Manner of pleading the former Conviction, &c. on arrainging the Appeal *de Novo* *ibid.*

21. And that a Conviction of Manlaughter is a good Bar therein, tho' Clergy

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21. In a Writ of Appeal, Want of fifteen Days *inter the Teste & Ret'* cured by pleading in Chief *ibid.*

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2. A Nonsuit before Appearance is not peremptory in Appeal, &c. *ibid.*

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1. Where A. by Contract subjects himself to one Action only, it can't be divided so as to subject him to two 65

2. *Ergo* Indorsee of part of a Sum in a Bill of Exchange can't have Action for that part *sans* shewing the other part to be satisfied *ibid.*

3. So where the Contract is at first entire, it cannot afterwards be divided in an Action *ibid.*

4. As where the Contract is to pay 100 *l. per Annum*, for his Service, Action lies not for 3 Quarters *ibid.*

5. So of a Lease for Years at 20 *l. per Ann.* it lies not for any less Term than a Year *ibid.*

6. And so of other Contracts for Annuities, Wages, Debts, &c. the Contract can't be apportioned *ibid.*

7. But if in a Lease the *Habendum* be for Years, yet the Rent may be apportioned according to the *Reddendum* 141

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2. He is not assignable over (except by the Custom of London to one of the same Trade) 66, 68

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5. Whatever the Apprentice gains belongs to a Master, and he may have an Action for it 68

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8. And following a Trade for seven Years is sufficient without any Binding, &c. and 5 *El.* a hard Law 613

9. Justices may compel a Master to take an Apprentice, &c. 67

10. Justices may discharge an Apprentice, and also order a Restitution of the Money given with him *ibid.*

11. So the Sessions may discharge him by original Order there, and order the Money to be returned 68, 491

12. An Apprentice may gain a Settlement (tho' the Master has none) as an hired Servant, by 14 *Car. 2.* 323

13. An Order by four Justices for discharging an Apprentice, &c. good, tho' the Master does not appear 490

14. But their Power to discharge Apprentices extends only to such Trades as are named in the Statute 491, 490

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16. But in *Certiorari* to remove such Order the very Discharge need not be returned, but only the Substance thereof. Page 470

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Arbitrament.

17. Where an Award creates a new Duty, the old is extinguished. 69

18. But if it only ordains a Release to discharge the old Duty, 'tis otherwise. *ibid.*

19. An Award may be good tho' no Time appointed for Performance per *Holt*, for the Law supplies the Time. *ibid.*

20. For whether it be to be on Request or Tender, or not, the Law says it shall be in convenient Time. *ibid.*

21. An Award that the Party or his Executors shall release, &c. is good, for either may be sued for Nonperformance. *ibid.*

22. An Award that a Suit in Chancery shall be dismissed, is good. 75

23. An Award that all Suits shall cease, is good and final; but an Award to be Nonsuit is not. 74, 75

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7. A. on Judgment against him renders himself, but never gives Notice to the Plaintiff nor gets the Bail discharged, and the Plaintiff on *Sci' Fa'* gets Judgment against the Bail, the Court would not relieve them on Motion, but put them to their *Audita Querela* 101

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2. And a Covenant or Condition to restrain such Power is void 96

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6. And such Under Deputy may either act in his own Name, or else reciting his Authority, act in the Name of the Deputy or Principal 97

7. Except an Under Sheriff, who must act in the High Sheriff's Name, because the Writs are so directed, &c. *ibid.*

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5. In B. R. if the Sum recovered exceed the Sum in the *Ac etiam Bille*, the Bail is not liable

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6. On Removal by *Habeas Corpus* special Bail must be given in here, except in Cases of Executors

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7. But on such Removal the Court will examine the Cause of Action and take Bail accordingly

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8. And on Removal out of an inferior Court, the Plaintiff is bound to accept the Bail below, except in London

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9. For the Sufficiency of Bail in London is at the Peril of the Clerk who is responsible, and the Plaintiff can't except there

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10. Yet in Debt against Executor on a Judgment suggesting a *De vastavit*, he shall give Bail; for there the Action is in the *Debet & Detinet*

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11. And on Removal by *Habeas Corpus* where special Bail was below, he shall give Bail to appear within two Terms, but not to pay the Condemnation

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12. On Error in Parliament of a Judgment affirmed in B. R. new Bail is required

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13. For the first Bail does not extend to Costs awarded in the House of Lords, therefore a new Recognizance is to be

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14. One charged in Custody of the Sheriffs of L. was discharged on common Bail for want of proceeding in two Terms by 4. 5 W. 3.

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16. The Merits of the Case not to be examined into upon Bailing (*vide supra*, 7.)

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17. If the Sheriff takes insufficient Bail for Appearance, and the Plaintiff refuse it, he is liable to an Action and may be also amerced

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18. The Sheriff may take Bail-Bond on Attachment for Contempt, but the Prosecutor may refuse to accept it

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19. But if in either Case the Plaintiff take an Assignment of the Bail-Bond (tho' insufficient) the Court will not amerce

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20. A. recovers in three Actions where were three Bails, the Defendant render'd himself, and one of the Bails enter'd an *Exoneratur* on the Bail-Piece; this does not discharge the rest till *Exoneratur* enter'd for them also

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21. So A. on Judgment against him renders himself, but gives the Plaintiff no Notice, nor discharges the Bail-Piece; and the Plaintiff on *Sci Fa* gets Judgment against the Bail, and the Court would not relieve because no *Exoneratur* enter'd

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22. Tho' a Render before Return of the *Latitat* is not pleadable to an Action on a Recognizance of Bail

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23. Yet the Court *ex Officio* allowed it on the *Latitat* as well as on a *Sci Fa*, and denied the Case of *Miles* and *Bateman*, 3 Keb.

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8. Yet *Lisle*, who was indicted of Murder and found guilty of Manslaughter, was bailed before Clergy had *ibid.*

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11. But upon Error of a Conviction for a forcible Detainer, the Defendant was refused to be bailed Page 106

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2. In Replevin, if the Defendant makes Conuzance or justifies as Bailiff to J. S. a Traverse of the Command of J. S. is sufficient Page 107

3. So in Trespass for taking Cattle or Goods, for in those Cases, tho' J. S. may have Right to take the Cattle, &c. yet a Stranger can't justify the Taking but by his Command, &c. *ibid.*

4. But *aliter* in Trespass *quare Clausum fregit*, for there, tho' the Defendant justifies as Bailiff, or by Command of J. S. the Plaintiff shall not traverse the Command, because it would admit the Truth of all the rest of the Plea *ibid.*

5. In Trespass on a Justification as Bailiff to a Court-Let for levying an Amercement, some Esteem of the Court or Warrant of the Steward must be shewn *ibid.*

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2. But notwithstanding Earnest, the Money is to be paid on fetching away the Goods; and a Demand *sans* Payment is void *ibid.*

3. And if the Buyer does not come to pay, the Seller ought to go and request him, and then if he does not pay, &c. in convenient Time, the Agreement is dissolved *ibid.*

4. Where one Thing is to be the Consideration of the other, tho' there be mutual Promises, Performance must be averr'd 112

5. As if I sell you my Horse upon your paying me 10 L. I can't have the Money without a Delivery or Tender of the Horse, nor you my Horse without averring Payment or Tender and Refusal of the Money Page 113

6. So where mutual Promises are to transfer Stock on Payment of so much Money 112

7. But *aliter* where a Time is limited for the Performance on one Part 113, 171, 172

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3. Wife can't charge her Husband after notorious Separation, tho' by Consent and separate Allowance 116

4. Nor is he bound by her Contracts, or liable even for Necessaries, after a notorious Elopement, unless he take her again 116, 119

5. But if he turns her away he gives her Credit for Necessaries wherever she goes, *per Holt* 118

6. And while they cohabit he shall answer her Contracts, &c. for by cohabiting his Assent is presumed, *per eundem* *ibid.*

7. *Contra* where the Husband expressly disassents beforehand, by Notice to

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to the Owner or his Servant, *per eundem* Page 118

8. If she takes up Materials, as Silks, &c. and pawns them before made into Clothes, he is not liable; for they never came to his Use. *Contra* if made up and worn, *per eundem* *ibid.*

9. Action lies not on a Promise of Marriage, except the Contract is mutual, for otherwise it was only *Nudum Pactum* 437, 438

10. A Contract of Marriage *per verba de presenti* is a Marriage *de facto* 437, 438

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12. Yet held that Marriage by a mere Layman was void, and a Cohabitation thereupon did not entitle the Man to Administration of the Woman's Goods. 119

13. For on his demanding a Right due to Husbands by the Ecclesiastical Law, he must prove himself a Husband by the same Law 120

14. *Quare* in Case of such Husband's Death, if it shall entitle the Feme and the Issue to a Distribution *ibid.*

15. Note the Form of pleading a Marriage is, That it was *per Presbyterum sacris Ordinibus Constitutum* *ibid.*

16. Yet in Debt by Baron and Feme *Nunquam accouple*, &c. is no Plea, for a Marriage *de facto* is sufficient 437

17. Nor can the Spiritual Court annul a Marriage after the Parties are dead, because they proceed *pro salute Anime* 121

18. Yet Evidence at Common Law was admitted to Bastardize a Peer, even after the Death of himself and Parents (*durum*) 120, 121

19. The Husband may release Costs adjudg'd to the Wife in the Spiritual Court, unless a Separation be, and Alimony allow'd 113

20. He alone must bring the Action for Work done by her during Coverture, unless an express Promise be made to her Page 114

21. And the Advantage of such Work shall not survive to her, but go to the Husband's Executors *ibid.*

22. But Money earn'd by her living separate shall go towards her own Maintenance 118

23. Trover by Baron and Feme, *ad dampnum* of both, held naught after Verdict, for the Possession and Property of the Wife is vested in the Husband 114

24. But Trespas by him for Imprisonment of the Wife, *per quod Negotie viri infecte reman' ad damp'* of both, held well after Verdict 119

25. For Matter may be alledg'd in Aggravation of Damages, for which no Action will lie *ibid.*

26. Husband of a Feme Executrix gives a new Day to the Testator's Debtor, who then makes a new Promise, &c. he may bring *Assumpsit* thereon without joining the Wife 117

27. But if he dies before Recovery she is restored to her former Right, for the Duty was not extinguished by the new Promise *ibid.*

28. A *Sci Fa* by Baron and Feme on a Judgment recovered by her while Sole, if after Execution awarded she dies, it survives to the Husband 116

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